in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) LIMITATION.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force; or

(2) the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

EXECUTIVE SESSION

NOMINATION OF HENRY W. SAAD TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to executive session for the consideration of Calendar No. 705, the nomination of Henry W. Saad, of Michigan, to be U.S. Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the nomination.

The legislative clerk read the nomination of Henry W. Saad, of Michigan, to be U.S. Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent to proceed, along with Senator COLLINS, as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. LIEBERMAN and Ms. COLLINS pertaining to the introduction of S. 2701 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Might I inquire of the Chair what the pending business is.

The PRESIDING OFFICER. The pending business is the nomination of Henry Saad, of Michigan, to the Sixth Circuit Court of Appeals.

Mr. KYL. Mr. President, Senator HATCH is chairing a subcommittee hearing and asked that I open the debate with respect to the nomination and confirmation of Judge Henry Saad. So I think my comments are reflective of Chairman HATCH's views, but I will present them as my own as well.

I will first speak a little bit about Judge Saad and his nomination to this court and why we have had a problem in getting this far with his nomination but why I hope our colleagues will be willing to vote to confirm him.

As the Chair noted, he is a nominee to the U.S. Circuit Court for the Sixth Circuit. He was nominated, and I ask my colleagues to think of this date for a moment, on November 8, 2001. It is now 2004. He is a distinguished State court of appeals judge from the State of Michigan with nearly a decade of experience in that court. He has been there since 1994. In that capacity, he is actually elected and reelected, and he has been reelected twice to serve on the court of appeals with broad bipartisan support within the State of Michigan.

The American Bar Association has rated Judge Saad qualified to sit on the U.S. Court of Appeals for the Sixth Circuit. Therefore, his nomination should have come before us long before now. He should be confirmed, obviously.

I will mention a bit about the Sixth Circuit. There are 16 authorized seats on the circuit, but there are 4 vacancies. Obviously, one-fourth of the authorized seats on that court remain vacant today. President Bush has nominated four very well-qualified individuals from Michigan to fill these vacancies. The seat to which Judge Saad has been nominated has been deemed a judicial emergency and, of course, it is not hard to see why with that number of vacancies.

Interestingly, President George H.W. Bush, President Bush No. 41, first nominated Judge Saad to the Federal bench in 1992, but the Democratic Senate failed to act on his nomination at that time, as well as one other from Michigan, prior to the end of President Bush's term. So this is the second time he has been nominated for this prestigious court.

A bit about his personal history. Judge Saad was born in Detroit. He is a lifelong resident of the State. He would be the first Arab-American appointee to the Court of Appeals for the Sixth Circuit. According to the Detroit Free Press, Bush's nomination of Saad in the wake of the September 11 attacks—remember, it was only 2 months to the day following the September 11 attacks:

> conveys an important message to all the citizens and residents of this country that we embrace and welcome diversity and that we are extending the American dream to anyone who is prepared to work hard.

Judge Saad has had a distinguished career as a practicing attorney and law professor before serving on the State bench. From 1974 until 1994 he practiced law, first as an associate and then a partner with the prestigious Detroit firm of Dickinson, Wright. He built a national practice and reputation there in the areas of employment law, school law, libel law, and first amendment law. He serves as an adjunct professor at both Wayne State University Law School and the University of Detroit Mercy School of Law. He received his

bachelor's degree in 1971 and his law degree, magna cum laude, in 1974, both from Wayne State University. He received a special Order of the Coif award in 2000, which is bestowed by a vote of the faculty of the school upon a distinguished graduate who has earned his degree before the law school was inducting members into the Order of the Coif.

Judge Saad has significant appellate experience in both civil and criminal matters, authoring well over 75 published majority opinions. His nomination has broad bipartisan support, including endorsements from such disparate groups as the United Auto Workers and the Michigan Chamber of Commerce.

Judge Saad is dedicated to improving the law and helping his State and local community through volunteer work. He was chairman of the board of the Oakland Community College Foundation, president of the Wayne State University Law School Alumni Association, and he is currently a member of the board of visitors to the Ave Maria Law School.

Judge Saad was a board member of the National Council of Christians and Jews and the American Heart Association, as well as trustee of WTVS Channel 56 Education Television Foundation.

Judge Saad received the ''Salute to Justice John O'Brien Award'' for outstanding volunteer service to the people of Oakland County in 1997, and he received the Arab-American and Chaldean Council Civic and Humanitarian Award for outstanding dedication to serving the community with compassion and understanding in 1995.

Let me read a few statements from people who have endorsed the nomination and confirmation of Judge Henry Saad. The Secretary of Energy, former Senator from the State of Michigan, said:

I have known Henry for twenty years on a personal and professional level. He is a person of unimpeachable integrity and will serve our country and our justice system remarkably well.

John Engler, the former Governor of Michigan, said:

The President selected individuals [including Henry Saad] who are experienced judges and whose reputations for intellect, knowledge of the law, diligence and temperament are well established. Judge Saad has established a distinguished reputation on Michigan's appellate court which he will take to the federal appeals court.

The President of the United Auto Workers, Stephen Yokich, said:

I have known Judge Saad for twenty-five years. He is a man of the highest integrity and a judge who is fair, balanced and hard working. I strongly support President Bush's nomination of Judge Saad to the federal appellate bench.

Congressman JOSEPH KNOLLENBERG, who is a Representative from the State of Michigan, said:

I have known Judge Saad for over twenty-five years. He was an outstanding lawyer and is a highly regarded appellate jurist, known for his scholarly opinions, balance and fairness. I am confident he will be a great addition to the Federal appellate bench.

Justice Stephen Markman from the Michigan Supreme Court said:

In his seven years on the Michigan Court of Appeals, Judge Saad has been one of its most thoughtful and fair-minded jurists. His opinions and his judicial integrity have earned him the respect of a remarkably broad range of his colleagues.

Finally, Judge Hilda Gage of the Michigan Court of Appeals said:

I have served with Judge Saad on the Michigan Court of Appeals for six years. I admire his judicial independence and his scholarly analysis of the law. I applaud the President's nomination of Judge Saad to the Sixth Circuit Court of Appeals.

Those are some of the people who have worked with him, who have known him a long time, who represent a diverse point of view within the State of Michigan, and yet all of whom endorse the President's nomination of Judge Saad to the Sixth Circuit.

Let me speak for a moment about the status of his circuit because, as I noted at the beginning, there are four vacancies. One-fourth of the active seats on this court, are vacant. The President has nominated four very well-qualified individuals to fill these vacancies. All four of these vacancies have been deemed judicial emergencies by the Administrative Office of the U.S. Courts.

I might, for those who are not aware, describe what this means. The Administrative Office of the U.S. Courts characterizes, in some rare circumstances, vacancies on the court as judicial emergencies by virtue of the caseload of the court, the nature of the cases before the court, the ability of the court to turn out decisions and opinions, and the number of judges available to serve on the court. They balance all of those considerations. When the court does not have enough people to do the job it is required to do, when litigants are taking too long to get their matters heard before the court, and in effect when justice is not being done because it is being delayed, then the Administrative Office of the U.S. Courts declares judicial emergencies.

All four of these vacancies in the Sixth Circuit have been so designated. The confirmation of two judges in late April and early May of this year filled two of then six vacancies, but the circuit remains overburdened.

By the way, let me quantify what I said a moment ago. When I spoke of judicial emergency, in the court of appeals, that occurs specifically when adjusted filings per panel are in excess of 700, or any vacancy is in existence more than 18 months where adjudicated filings are between 500 and 700. All four of the Michigan vacancies on the Sixth Circuit have been in existence for more than 18 months and the adjusted filings total 588. That is why it is so important that we act now to fill this vacancy.

Only a substantial commitment on the part of the senior judges of the Sixth Circuit, and the district judges from within the circuit filling in, as well as visiting appellate judges from other circuits, has kept the caseload of this important circuit manageable. It is the third busiest court of appeals in the country. Chief Judge Boyce Martin has asked Congress to authorize a 17th judge for the court.

So if we filled all four of these vacancies today, not only would we have at least filled those judicial emergencies, but the chief judge of the circuit has said we need additional judges in addition to these.

Among the 12 U.S. Courts of Appeals, the Sixth is the 11th in the timeliness in the disposition of cases. Only the Ninth Circuit takes longer to issue its opinions. I am familiar with that, having practiced before the Ninth Circuit. When it takes so long for litigants who have disputes before the court to get action on their cases, justice is denied. This circuit, being the next to the bottom in terms of the speed with which its decisions are made, makes it a clear candidate for the Senate to act. It is unconscionable that we have not been able to confirm Judge Saad as well as the other three nominees to this court.

The district court judges within the Sixth Circuit have complained that what has turned out to be regular duty as substitute judges on the court of appeals has slowed down their own dockets considerably. In other words, they have not been able to do their own jobs because they have had to fill in for the circuit court judges. According to Judge Robert Bell, who is a district judge from the Western District of Michigan:

We're having to backfill with judges from other circuits, who are basically substitutes. You don't get the same sense of purpose and continuity you get with full-fledged court of appeals judges. . . . Putting together a federal appeals court case often takes a Herculean effort in a short time for visiting district judges. ''We don't have the time or the resources that the circuit court has,'' Bell said. You can't help to conclude that if we had 16 full-time judges with a full complement of staff that each case might get more consideration, not to say results would be different.

This quote, by the way, was the Grand Rapids Press, February 21, 2002.

U.S. attorneys in Michigan likewise have complained that the vacancy rate in the Sixth Circuit has slowed justice and complicated the ability to prosecute wrongdoers. It has enabled defendants to commit more crime while awaiting trial. It has led to less consistencies in the court's jurisprudence and effectively deprived the use of en banc review in some cases. En banc review is the situation where a panel of three judges has made a decision and the litigants have asked the full court to hear—in effect to rehear or have a mini-appeal—a case from the decision of the panel of three. If you do not have the full complement of judges on the court, you can't have the same kind of en banc review.

Let me quote a letter from 31 assistant U.S. attorneys in the Eastern District of Michigan sent to our colleague,

Senator CARL LEVIN, on January 16, 2002:

In years past, it was the normal practice of the Sixth Circuit that a case would be heard by the Court approximately three months after all briefs were filed, and in most cases an opinion would issue in about three additional months. At present, due to the large number of vacancies on the Court . . . it has been taking on average between twelve and eighteen months longer for most appeals to be completed than was the case for most of the 1990's.

These are the prosecuting attorneys. These are the people who I noted have complained that the vacancy rate has complicated their ability to prosecute wrongdoers. Our failure to act in the Senate has real-life consequences on the people of Michigan. When justice cannot be dispensed with because there are not enough judges and wrongdoers are awaiting trial and they are able to go out and commit additional crimes, we have a responsibility to solve that problem. That is why it is so important for us to vote and to vote up or down on the confirmation of Judge Saad.

I serve on the Judiciary Committee. I heard some questions raised about whether he would be a good addition to the court. You heard just a summary of the many people who spoke on his behalf with a wide diversity of opinion. He has a ''qualified'' rating from the Bar Association.

If my colleagues want to vote no on his nomination, they are free to do so. On rare occasions, I have voted no against judicial nominees. I voted no on very few occasions when President Clinton was making the nominations, but I felt that I always had the right to express my view one way or the other. That is all Judge Saad is asking for. With the nomination pending now for almost 4 years, it is time that he have a vote up or down.

Let me read to you a letter from 31 assistant U.S. attorneys in the Eastern District to Senator LEVIN:

[D]elays in criminal cases hurt the government; the government has the burden of proof, and the longer a case goes on the more chance there is that witnesses will disappear, forget, or die, documents will be lost, and investigators will retire or be transferred.

I go on from a different portion of this letter:

In some cases, convicted criminal defendants are granted bond pending appeal. The elongated appellate process therefore allows defendants to remain on the street for a longer period of time, possibly committing new offenses. In addition, the longer delay makes retrials more difficult if the appeal results in the reversal of a conviction.

Further quoting from this letter:

The Sixth Circuit has resorted to having more district judges sit by designation as panel members. This practice has contributed to a slowdown of the hearing of cases in district courts, because the district judges are taken out of those courtrooms. The widespread use of district judges also provides for less consistency in the appellate process than would obtain if full-time Circuit judges heard most of the appeals.

In some cases, the small number of judges on the Court has served to effectively deprive the United States of en banc review. . . . Achieving a unanimous vote of all of those judges of the Court who were not part of the original panel is, as a matter of practice, impossible, and not worth seeking. However, if the Court was at full strength, an en banc review could have been granted with the votes of about two-thirds of the active judges who were not part of the original panel.

Why haven't we been able to vote on Judge Saad? The two Senators from the State, notwithstanding the fact that there are four vacancies in their own State, that the prosecutors from the State have written as I have just indicated, that people of wide disparate views in their State support his nomination, the two Senators from the State have urged their colleagues not to allow the vote to go forward. The reason is because two nominees to fill vacancies in Michigan were left without hearings at the end of the Clinton administration in 2001. It is not uncommon at the end of an administration for there to be nominations pending. I predict that because of opposition from the minority party, there will be a lot of nominations President Bush would like to have confirmed but which will not be confirmed because the other party will not allow it to happen. Sometimes nominations are made too late in the year for the vetting to be done, for the Bar Association to report, for the hearings to be held, for the executive work of the Judiciary Committee to report the judges to the Senate floor, and for the full Senate to vote. That is not an uncommon occurrence.

I note, for example, that Senators who are upset that two judges weren't considered at the end of the Clinton administration should also note that two nominees, including John Smietanka, the very well qualified U.S. attorney from the Western District of Michigan, were also left without hearings at the end of President Bush's term in 1993. So President Clinton got to appoint the same number of judges to the Sixth Circuit as the number of vacancies that came open during his Presidency. As with his predecessor, there were a couple of nominations still pending at the time his term ended.

But as these examples illustrate, both parties have had nominations left pending at end of their President's terms. The effort of the Senators from Michigan to block the consideration of Judge Saad as well as the other three nominations of President Bush at the outset of his term in 2001 is unheard of. It might be one thing if these nominations had just occurred and we didn't have time to consider them, but Judge Saad, as I said, was nominated on November 11, 2001, 2 months after the historic event of September 11. Five of the Sixth Circuit active judges—nearly half—were appointed by President Clinton—one President. I don't think it is possible to argue here that there is some kind of political agenda by Republicans or by President Bush to deny President Clinton nominations and confirmations of his nominations.

I might note that an editorial opinion in Michigan confirms this point. It is overwhelmingly opposed to the tactics of the minority to prevent confirmation of the nominees President Bush has made to fill these vacancies.

Let me quote from the Grand Rapids Press of February 24, 2002. This is only 3 months after the nomination of Judge Saad:

The Constitution does not give these Senators from Michigan [Senators Levin and Stabenow] co-presidential authority and certainly does not support the use of the Court of Appeals to nurse a political grudge. . . . [Senators Levin and Stabenow] have proposed that the President let a bipartisan commission make Sixth Circuit nominations or that Mr. Bush re-nominate the two lapsed Clinton nominations. Mr. Bush has shown no interest in either retreat from his constitutional prerogatives. Nor should he. Movement in this matter should come from Senators Levin and Stabenow—and, clearly, it should be backward.

From the Detroit News, June 30, 2002:

It was wrong for the Senate to fail to act on Clinton's Michigan nominees. But another wrong won't make things right for Michigan. Enough is enough. . . . Senators, it is long past time to fill Michigan's voids in the hall of justice.

I will conclude with one comment. Colleagues on the other side of the aisle will argue that we actually have confirmed a lot of President Bush's nominees. The truth is that we have confirmed about the same number of district court judges as is usual for the Senate during the first term of the President. In the first 3½ years of President Bush's term, we have confirmed, so far, 198 judges, and that is pretty close to the other President's by this overall statistic. President Bush would be on about the same pace as President Clinton, who appointed a total of 371 judges in 8 years—just 4 fewer than the 375 appointed by President Reagan. This would be about par.

The problem is, in the circuit court judges, Presidents ordinarily get most of their nominees confirmed, but President Bush is only getting about half of his confirmed.

Here are the statistics. President Clinton saw 71 percent of his circuit court nominees receive a full vote in the Senate; the first President Bush, 79 percent. President Reagan, 88 percent of his circuit nominees were confirmed; President Carter, 92 percent. But in the 107th Congress—our Congress—President Bush has only gotten 53 percent of his circuit court nominees voted on by the full Senate, 17 out of 32.

That is where the problem is and there is no secret why. As has been described many times by my friends on the other side of the aisle, the circuit court is just below the Supreme Court. It is viewed as more powerful and more important than the district courts. There are many more district court judges. They are the court of first resort. Their cases are appealed to the circuit courts.

Most of the time, circuit court decisions are not appealed or the appeals

are not accepted by the Supreme Court. It can only hear maybe 300 cases or so a year, so, as a practical matter, the circuit courts become the court of last resort. That is why Democrats have refused to even vote on President Bush's nominees for circuit courts because they believe President Bush's nominees would not be as capable, have the right political philosophy, or serve the interests of justice as well as a President of their party.

As I have noted, whether Democrat or Republican, the full Senate under Republican control, as well as under Democratic control, has allowed votes on the vast majority of the circuit court nominees of previous Presidents. It is only President George Bush who has only received a vote on half of his circuit court nominees. That is what is going on. It is wrong. We need to vote. We need to vote on a nominee who has been pending now since November 11, 2001, Judge Henry Saad. I urge my colleagues when that opportunity comes within the next several hours, we will have that opportunity, they will agree to permit an up-or-down vote. That is all we are asking for.

If they have objections, and I see a couple of my colleagues are here, perhaps they would like to discuss their objections to Henry Saad. But let the Senate vote on this nominee as we do with most other issues. We bring it to the vote. Our Members want to vote. But at least this man, who has been waiting now for 3 years, would have a chance to have his nomination either confirmed or rejected.

I urge my colleagues to provide him that opportunity.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. I ask unanimous consent that I be permitted to speak as in morning business and after I finish, in approximately 15 minutes, the Senator from New York be given an opportunity to speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

BIN LADEN FLIGHT MANIFEST

Mr. LAUTENBERG. Mr. President, today I rise to discuss some disturbing information that was released to the public today. It concerns the aftermath of the terrorist attacks on the United States on September 11, 2001.

A little more than a week after September 11, precisely on September 19, 2001, a luxury airliner 727 took off from Boston Logan Airport. It was wheeled up, at 11 o'clock at night, under the cover of darkness. That airplane left the United States for Gander, Canada, then on to Paris, Geneva, and the final stop was Jeddah, Saudi Arabia.

The question was, Who was on this charter flight carrying people who will never again set foot in the United States? That charter flight, 1 week after September 11, carried 12 members of the bin Laden family out of our country. When they left, they took a million unanswered questions with them.

Now, on this chart is the flight manifest of that fateful flight. I will read the names of those with the last name of bin Laden: ''Najia Binladen, Khalil Binladen, Sultan Binladen, Khalil Sultan Binladen, Shafig Binladen, Omar Awad Binladen, Badr Ahmed Binladen, Nawaf Bark Binladen, Mohammed Saleh Binladen, Salman Salem Binladen, Tamara Khalil Binladen, Sana's Mohammed Binladen, and Faisal Khalid Binladen.''

I ask my colleagues, why in the world would we let 12 members of Osama bin Laden's family leave the country at that moment?

One of the first rules of a criminal investigation when you have the suspect on the run is to interrogate the family members. Osama bin Laden had just murdered over 3,000 Americans, but the administration let his family flee. The question is, Why?

There are reports that some of the bin Ladens were interviewed on the airplane by the FBI. Interviewed on the airplane? Everybody knows when the FBI is conducting a serious interview they do not do it within hearing of everyone else. These people were about to take off. Why would they disclose anything to U.S. law enforcement? They were getting out of here.

I have talked to law enforcement officials who said, at the very least, the bin Laden family should have been detained on a material witness warrant and put under oath and asked the question, Do you know where Osama bin Laden is? Do you know where his safe houses are? Where does he get his money? Who are his associates?

The Saudi PR machine has been spinning that Osama bin Laden is ostracized from his family; no one has any contact with him anymore. Most experts believe that is not the truth. It may be true for some family members but certainly not all.

It is, at the very least, unclear what bin Laden's position on Osama bin Laden really is. Osama bin Laden's brother, Yeslam bin Laden, was interviewed on television recently. He was asked the question, Would you turn Osama bin Laden in, if you knew where he was? He essentially said no.

Before it left this country, this charter flight stopped in several U.S. cities. It started by picking up one bin Laden, Najia bin Laden, in Los Angeles. It then flew to Orlando to pick up more members of the bin Laden family. Once in Orlando, the crew of this charter flight found out who they were carrying as passengers and threatened to walk out. They did not want to fly that flight but the charter company insisted they stay on the job. The airplane was flown from Orlando to Dulles, near Washington, to pick up more bin Ladens. Then the flight landed at Logan Airport in Boston to pick up additional family members to leave the country.

At Logan Airport, the officials there were not eager to let this plane full of bin Ladens take off so easily. The airport officials demanded clearances from the Bush administration before they let this airplane leave. But then, to their astonishment, the clearances quickly came through. Let them leave, was the order from the Bush administration. And we ask, Why?

Look at the names of the bin Laden family members who are allowed to leave the country. It is astounding, 12 of them, all of them with bin Laden last names. That is a pretty good indication that they ought to be questioned, ought to be interpreted, that they ought to tell what they know about Osama bin Laden, the murderer of our Americans.

Millions of Americans were still distraught on September 19. Thousands of foreigners were detained across our Nation and across the world, but the family of the perpetrator was let go. It makes no sense.

Some of these individuals' names raise specific concern. Take Omar bin Laden. He was under suspicion for involvement in a suspected terrorist organization. This was known on September 19, 2001, but the administration allowed him to flee. Once again, we must ask the question, why?

The President of the United States should explain to the American people why his administration let this plane leave. The American people are going to be shocked by this manifest, and they deserve an explanation.

These are 12 names that may have been inconvenienced in September 2001, if we detained them and subjected them to questioning under oath. They might not have liked it. That is 12 people potentially inconvenienced compared to the almost 3,000 names of those murdered on 9/11.

The American people deserve an answer. This information is reliable. Manifests are always filed with flights, especially those going out of the country. The destination: Saudi Arabia, Saudi Arabia, Saudi Arabia—all the way down the line. The passport numbers are blocked out on this chart, but their identity is quite clear.

This is a question that must be answered.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HAGEL). Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I know my colleagues are waiting, so I will try to be brief. I have come to the floor to talk about a resolution Senator CORNYN and I are submitting on human trafficking. Before I get into that, I want to mention a couple of points in reference to my good friend from Arizona. One is a numerical question. He talked about courts of appeals

judges who have been approved under previous administrations and then mentioned the 107th Congress of this administration. It is sort of a bit of comparing not apples and oranges but apples and half apples.

I believe if you look at the number for the whole of President Bush's term, it goes up considerably. It might not be quite as high as some of the others, but it is much higher than the 53 percent Senator KYL mentioned. Senator KYL is a good friend of mine. I mentioned this to him while he was here.

But the second point I would make—I know my good colleague from Michigan, CARL LEVIN, will be bringing this up at some length—to me, the issue is not a tit-for-tat issue. They did a lot of wrongs previously when President Clinton was President and they did not let judges come through, and that created the vacancies in Michigan. But I have some sympathy for the Detroit News article Senator KYL quoted that said there should not be tit for tat here.

Two wrongs don't make a right. It is sort of anomalous for those creating the wrong to say two wrongs don't make a right. But there is a far more important point, and that is this: The reason we have no approval of judges in Michigan is the President has ignored the part of the Constitution that talks about advise and consent. For the vacancies in Michigan, if the President sat down with the Michigan Senators, Mr. LEVIN and Ms. STABENOW—both reasonable people, people who have engaged in many bipartisan relationships themselves—and said: ''How do we work this out?'' it would have been worked out in the first 6 months of the President's term.

The idea that, A, previous Senates have created vacancies, and then the President says to the Senators of that State or to the Senators of this body: ''It's my way or no way. I'm picking the judges. You have no say,'' that is what has created the deadlock.

The Constitution calls for advice as well as consent. In States where there has been advice, it has worked. In my State of New York we have no vacancies. Why? Because the administration has consulted with me. My colleague Senator CLINTON and I have nominated some judges to vacancies in New York. They have nominated the lion's share, but none of them would meet with this body's disapproval.

I am sure, if the President would simply sit down with Senator LEVIN and Senator STABENOW, and say: ''How do we work this out?'' it would be worked out, pardon the expression, in a New York minute. But they do not. They have an attitude: Here is what we want. You approve them. And if you don't approve every single one, then you are obstructionists.

As has been mentioned over and over again, of the 200 judges this body has dealt with, 6 have been disapproved and 194 have been approved. That is a darn good track record. I am a Yankee fan. The Yankees' percentage is up there around .700, .650 in terms of wins and losses. We are all proud of that. The President is doing a lot better than the Yankees.

The idea that ''It's my way or no way'' is not going to work. Furthermore, I would argue to my colleagues, it is not what the Founding Fathers wanted. If they wanted the President to appoint judges unilaterally, they would have said so in the Constitution. But they wanted the Senate to have a say.

I remind my colleagues, one of the first judges nominated by President Washington, John Rutledge of South Carolina, was rejected by the Senate because, of all things, of his views on the Jay treaty. And in that Senate were a good number of Founding Fathers, people who had actually written the Constitution, so clearly the Founding Fathers did not intend the Senate to be a rubberstamp.

Certainly they did not intend for the Senate to hold up a majority of judges, but when the President nominates people way out of the mainstream, when the President refuses to sit down and negotiate, these are the results. And I would guess—again, I defer to Senator LEVIN, who is on the floor—my view is, if the President or his counsel were to pick up the phone and say to Senator LEVIN: ''How do we work this out?'' it is still not too late, even as we enter the twilight of this Congress, to get it done.

That is all I will say on that matter. I will leave the rest to my colleague from Michigan.

(The remarks of Mr. SCHUMER pertaining to the submission of S. Res. 413 are printed in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Senator from New York for his comments relative to judicial appointments. He is exactly right in terms of the number of judges that this Senate has confirmed with the support of this side of the aisle. He is exactly right when it comes to the willingness of Senator STABENOW and myself to compromise the deadlock that exists with this administration over the Michigan judges. We have been willing to do that from the beginning of this administration. We continue to be willing to attempt some kind of a compromise relative to these vacancies.

What we are unwilling to do is to allow a tactic, which was used relative to these two women who were nominated by President Clinton which denied them hearings for over 4 years and over 1½ years respectively, to succeed, as the good Senator from New York said, to either create these vacancies or to leave these vacancies opened for the next President to fill. That is not the way things should work. It is not the way the Constitution contemplated it. We are going to do our best to continue to press for a bipartisan solution in a number of ways but in the meantime to not simply say, OK, go ahead, fill vacancies which should not exist but only exist because of the denial of hearings for two well-qualified women who were appointed by President Clinton.

I thank the Senator from New York for his comments, for his perception, for his willingness and determination—more than willingness—to look at the full meaning of the Constitution so that it is not just the President who makes appointments in a situation such as this and assumes that the vacancies, which were created by denial of hearings for nominees of the previous administration, will be rubberstamped by this body.

Mr. SCHUMER. Mr. President, will my colleague yield?

Mr. LEVIN. I am happy to yield.

Mr. SCHUMER. First, I compliment my friend from Michigan for his steadfastness on this issue. Everyone knows the desire of the Senator and his colleague, Senator STABENOW from Michigan, to compromise. Over and over and over again, we on this side of the aisle have said: We don't expect the President to appoint judges that we agree with on most things. In fact, for 200 judges, the vast majority of us have voted for judges with whom we don't agree on many issues.

The point is, to blame these vacancies, as my friend from Arizona tried to do, on the Senators, when the President refuses to just pick up the telephone and call them and say, ''How do we work this out,'' is very unfair.

I ask my colleague, once again, is he willing—and is Senator STABENOW, to his knowledge, willing—to sit down with the White House and come up with a compromise to fill these vacancies and that these vacancies don't have to remain vacant except for almost the intransigence of the White House to say, ''If you don't do it our way, we are not doing it any way''? Am I wrong in that assumption?

Mr. LEVIN. The Senator from New York is decidedly right. We have expressed that willingness. There have been a number of suggestions which have been made for compromise. One of the suggestions which we have made was that there be a bipartisan commission appointed in Michigan to make recommendations to the White House to fill these vacancies. The recommendations do not have to include these two women. Bipartisan commissions have been appointed in other States without this kind of a deadlock existing but simply to promote bipartisanship. That suggestion has been rejected by the White House.

There was another suggestion that was made by Senator LEAHY when he was chairman of the Judiciary Committee for that period of time the Democrats were in the majority. That suggestion was actually supported by the then-Republican Governor of Michigan. There was a recommendation by then-Chairman LEAHY as to how to resolve this issue. That was also

rejected by the White House. We continue to be open to suggestions to fill these vacancies, but we are deeply of the belief that the tactic that was used to deny hearings to qualified women—one of whom is a Michigan court of appeals judge and the other one of whom is a celebrated appellate lawyer in front of the Sixth Circuit—should not succeed. Maybe it succeeds in some places where there are not Senators in those States who will object because the new President of their party picks somebody they like and may have recommended.

But in a situation like this, when you have the advise-and-consent clause in the Constitution, and where there has been this kind of a tactic used, which the White House acknowledges was unfair—Judge Gonzalez has acknowledged that that tactic of denying hearings was unfair—simply to then fill the vacancies that were unfairly created is not something we can simply roll over and accept.

Mr. SCHUMER. Will my colleague yield further?

Mr. LEVIN. Yes.

Mr. SCHUMER. I thank the Senator for his steadfastness. He is hardly a person with a reputation of being unwilling to compromise and work things out. To my knowledge, he loves to do that kind of thing.

I will make one more point before yielding the floor. This involves my previous discussion with the Senator from Arizona, to corroborate and clarify the RECORD. There have been 35 court of appeals judges confirmed under President Bush. There were 65 in the 2 Clinton terms, twice as long. At least thus far, we are doing a better job confirming President Bush's court of appeals nominees than the previous Senates did in confirming President Clinton's. The numbers are fairly comparable, with President Bush doing a little bit better.

With that, I yield back to my colleague and tell him I fully support him in his quest for some degree of fairness and comity.

Mr. LEVIN. I thank my friend from New York.

Mr. President, I discussed with the Senator from New York the situation and the background relative to these Michigan vacancies. Two women, Helene White, a court of appeals judge, and Kathleen McCree Lewis, well known in Michigan as a very effective advocate—particularly appellate advocacy—were nominated by President Clinton to be on the Sixth Circuit Court of Appeals.

Judge White was denied a hearing for over 4 years, which is the longest time anyone has ever awaited a hearing in the Senate. She was never given a hearing by the Judiciary Committee. Kathleen McCree Lewis waited over a year and a half without a hearing in the Judiciary Committee.

For a time, there was a refusal to return blue slips on these two nominees by my then-colleague Spence Abraham. But even after Senator Abraham returned the blue slips in the spring of 2000, the women were not given hearings. They never got a vote in the Judiciary Committee or on the floor.

That distortion of the judicial nominating process was unfair to the two nominees. It deprived the previous administration of consideration by the Senate of those two nominees. Senator STABENOW and I have objected to proceeding to the current nominees until a just resolution is achieved.

Moving forward without resolving the impasse in a bipartisan manner could indeed deepen partisan differences and make future efforts to resolve this matter more difficult. I have said repeatedly that the number of Michigan vacancies on the Sixth Circuit provides an unusual opportunity for bipartisan compromise.

Judge Helene White was nominated to a vacancy on the Sixth Circuit on January 7, 1997. I returned my blue slip on Judge White's nomination. The junior Senator from Michigan, Mr. Abraham, did not. More than 10 months later, on October 22, 1997, Senator LEAHY, as ranking member of the Judiciary Committee, delivered what would be the first of at least 16 statements on the Senate floor, made over a 4-year period regarding Sixth Circuit nominations in Michigan. He called for the committee to act on Judge White's nomination. His appeal, like others that were to follow, was unsuccessful.

For instance, in October of 1998, more than a year and a half after Judge White was nominated, Senator LEAHY returned to the floor, where he warned the following:

> In each step of the process, judicial nominees are being delayed and stalled.

His plea was ignored. The 105th Congress ended without a hearing for Judge White.

On January 26, 1999, the beginning of the next Congress, President Clinton again submitted Judge White's nomination. That day, I sent one of many notes to both Senator Abraham and to the chairman of the Judiciary Committee. In that letter, I said the 105th Congress had ended without a Judiciary Committee hearing for Judge White and suggested that fundamental fairness dictated there be an early hearing in the 106th Congress. Again, no hearing.

On March 1, 1999, Judge Cornelia Kennedy took senior status, opening a second Michigan vacancy on the Sixth Circuit. The next day, Senator LEAHY returned to the floor, repeated his previous statement that nominations were being stalled, and raised Judge White's nomination as an example.

On September 16, 1999, President Clinton decided to nominate Kathleen McCree Lewis to that second vacancy. Soon thereafter, within 2 weeks, I spoke with Senator Abraham about both nominations, the Lewis and the White nominations. It had been more than 2½ years since Judge White was first nominated. Twice in the next month and a half, Senator LEAHY urged the committee to act, calling the treatment of judicial nominees unconscionable.

On November 18, 1999, I again wrote to Senator Abraham and Chairman HATCH, urging hearings in January 2000 for the two nominees. I then noted that Judge White had been waiting for nearly 3 years for a hearing, and I stated that confirmation of the two women was essential for fundamental fairness. My appeals were for naught, and 1999 ended without hearings in the Judiciary Committee.

In February of 2000, Senator LEAHY spoke again on the floor about vacancies on the Sixth Circuit. A few weeks later, in February of 2000, I made a personal plea to Senator Abraham and Chairman HATCH to hold hearings on the Michigan nominees. Again, I was unsuccessful and no hearing was scheduled.

On March 20, the chief judge of the Sixth Circuit sent a letter to Chairman HATCH expressing concerns about an alleged statement from a member of the Judiciary Committee that ''due to partisan considerations,'' there would be no more hearings or votes on vacancies for the Sixth Circuit Court of Appeals during the Clinton administration. The judge's concern would turn out to be well-founded.

On April 13, 2000, Senator Abraham returned his blue slips for both Judge White and Ms. Lewis without indicating his approval or disapproval. The day Senator Abraham returned his blue slips, I spoke to Chairman HATCH and sent him a letter reminding him that blue slips had now been returned, that objections had not been raised, expressed my concern about the unconscionable length of time the nominations had been pending, and I urged that they be placed on the agenda of the next Judiciary Committee confirmation hearing.

Those efforts were unsuccessful. Two Michigan nominees were not placed on the agenda. I tried again early May 2000. I sent another note to Chairman HATCH, but those nominations were not placed on the committee's hearing agenda then or ever.

Over the next several months, Senator LEAHY went to the floor 10 more times to urge action on the Michigan nominees. More than once, I also raised the issue on the Senate floor.

In the fall of 2000, in a final attempt to move the nominations of two Michigan nominees, I met with the majority leader, Senator LOTT, and Senator DASCHLE to discuss the situation. I sent a letter to the majority leader urging him, stating, ''The nominees from Michigan are women of integrity and fairness. They have been stalled in this Senate for an unconscionable amount of time without any stated reason.''

Neither the meeting with the majority leader nor the letter resulted in the Judiciary Committee holding hearings on these nominations, and the 106th

Congress ended without hearings for either woman.

Judge White's nomination was pending for more than 4 years, the longest period of time of any circuit court nominee waiting for a hearing in the history of the Senate. And Ms. Lewis's nomination was pending for over a year and a half.

There has been a great debate over the issue of blue slips. I am not sure this is the place for a lengthy debate on that issue, but I will say there has not been a consistent policy, apparently, relative to blue slips, although it would seem as though the inconsistency has worked one way.

In 1997, when asked by a reporter about a Texas nominee opposed by the Republican Senators from Texas, Chairman HATCH said the policy is that if a Senator returns a negative blue slip, that person is going to be dead. In October 7, 1999, Chairman HATCH said, with respect to the nomination of Judge Ronnie White:

> I might add, had both home-State Senators been opposed to Judge (Ronnie) White in committee, John White would never have come to the floor under our rules. I have to say, that would be true whether they are Democrat Senators or Republican Senators. That has just been the way the Judiciary Committee has operated. . . .

Apparently, it is not operating that way anymore because both Michigan Senators have objected to this nominee based on the reasons which I have set forth: that we cannot accept a tactic which keeps vacancies open, refusing hearings to the nominees of one President to keep vacancies open so they can then be filled by another President. That tactic should be stopped. It is not going to be stopped if these nominations are just simply approved without a compromise being worked out which would preserve a bipartisan spirit and the constitutional spirit about the appointment of Federal judges.

It is my understanding that not a single judicial nominee for district or circuit courts—not one—got a Judiciary Committee hearing during the Clinton administration if there was opposition from one home State Senator, let alone two. Now both home State Senators oppose proceeding with these judicial nominees absent a bipartisan approach.

Enough about blue slips. Senator Abraham then did return blue slips in April of 2000. He had marked them neither ''support'' nor ''oppose'', but they were returned without a statement of opposition. And what happened? What happened is, even though those blue slips were returned by Senator Abraham, there still were no hearings given to the Michigan nominees to the Sixth Circuit.

There was also an Ohio nominee named Kent Markus who was nominated to the Sixth Circuit. In his case, both home State Senators indicated their approval of his nomination, but nonetheless, this Clinton nominee was not granted a Judiciary Committee hearing, and his troubling account of that experience shed some additional light on the Michigan situation.

He testified before the Judiciary Committee last May, and said the following. This is the Ohio Clinton nominee to the Sixth Circuit:

> To their credit, Senator DeWine and his staff and Senator Hatch's staff and others close to him were straight with me. Over and over again they told me two things: One, there will be no more confirmations to the Sixth Circuit during the Clinton administration, and two, this has nothing to do with you; don't take it personally—it doesn't matter who the nominee is, what credentials they may have or what support they may have.

Then Marcus went on. This is his testimony in front of the Judiciary Committee:

> On one occasion, Senator DeWine told me ''This is bigger than you and it's bigger than me.'' Senator Kohl, who kindly agreed to champion my nomination within the Judiciary Committee, encountered a similar brick wall. . . . The fact was, a decision had been made to hold the vacancies and see who won the Presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

We are not alone in the view that what occurred with respect to these Sixth Circuit nominees was fundamentally unfair. Even Judge Gonzales, the current White House counsel, has acknowledged it was wrong for the Republican-led Senate to delay action on judicial nominees for partisan reasons, at one point even calling the treatment of some nominees ''inexcusable,'' to use his word.

The tactic used against the two Michigan nominees should not be allowed to succeed, but as determined as we are that it not succeed, we are equally determined that there be a bipartisan solution, both to resolve a current impasse, but also for the sake of this process. There is such an opportunity to have a bipartisan solution because there are four Michigan vacancies on the Sixth Circuit.

In order to achieve a fair resolution, Senator STABENOW and I have made a number of proposals, and we have accepted a number of proposals. We proposed a bipartisan commission to recommend nominees to the President. Similar commissions have been used in other States. The commission would not be limited to any particular people. The two nominees of President Clinton may not be recommended by a bipartisan commission. Of greater importance, the existence of recommendations of a commission are not binding on the President.

The White House, in response to this suggestion—again, even though it was used in other States—has said that the constitutional power to appoint judges rests with the President, and of course it does. So there is no way anyone would propose or should propose that a bipartisan commission be able to make recommendations which would be binding upon the President of the United States, nor is the recommendation binding upon the Senate of the United States. It is simply a recommendation. This has occurred in other States under these and similar circumstances, and there is no reason why it should not be used here.

We also, again, were given a suggestion by the then-chairman of the Judiciary Committee, Senator LEAHY, who has tried his very best to figure out a solution to this deadlock. Senator LEAHY made a suggestion which was acceptable to both Senator STABENOW and me. It was acceptable even to the then-Republican Governor of the State of Michigan, Governor Engler, but it was rejected by the White House.

We have an unusual opportunity to obtain a bipartisan solution. It is an opportunity which has been afforded to us by the large number of vacancies in Michigan on the Sixth Circuit Court of Appeals. Finding that bipartisan path would be of great benefit, not just as a solution to this problem but to set a positive tone for the resolution of other judicial disputes as well.

In addition to the points which I have made, we made the additional point at the Judiciary Committee relative to the qualifications of Judge Saad. We indicated then and we went into some detail then that it is our belief that his judicial temperament falls below the standard expected of nominees to the second highest court in this country.

The Judiciary Committee considered a number of issues relating to that subject, judicial temperament or shortfall thereof, of this nominee in a closed session of the Judiciary Committee. I will not go into detail further, except to say we have made that point. We feel very keenly about that issue.

The vote in the Judiciary Committee was 10 to 9 to report out this nomination. It was a vote along party lines. The temperament issue, however, was raised, and properly so, in the Judiciary Committee, as well as this basic underlying issue which I have spent some time outlining this afternoon.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

THE IRAQ DEBATE

Mr. MCCONNELL. Mr. President, I rise today to discuss a matter of great relevance to the debate about the war in Iraq and the recent Senate report on the intelligence community. This report has illuminated a subject of considerable controversy and partisan criticism of the President.

I also rise to speak about the importance of maintaining a basic standard of fairness in American politics.

I am talking about the controversy that erupted over the infamous ''16

words'' in the State of the Union Address that Senator KERRY and numerous Senate Democrats and the media cited in accusations that the President misled the country into war.

On January 28, 2003, President Bush told the American people that:

The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.

That was in the President's State of the Union address in January 2003.

When doubt surfaced about some—but not all—of the evidence supporting this claim, Joe Wilson, who had traveled to Niger to investigate an aspect of the intelligence, penned an op-ed in the New York Times accusing the administration of manipulating intelligence.

Not pausing for a full investigation, a partisan parade of Democratic Senators and Presidential candidates took to the streets to criticize the President and accuse him of misleading the Nation into war, a very serious charge.

Sensing a scandal, the media pounced.

NBC aired 40 reports on Wilson's claim. CBS aired 30 reports, while ABC aired 18.

Newspapers did not hold back either. The New York Times printed 70 articles reinforcing these allegations, while the Washington Post printed 98.

Pundits and politicians gorged themselves on the story.

Joe Wilson rose to great fame on the back of this inflammatory charge. He wrote a book for which he received a five-figure advance, he was lionized by the liberal left, and he became an adviser to Senator KERRY's Presidential campaign, a campaign to which he is also a financial contributor.

Of course, we now know Wilson's allegation was false. And we know the chief proponent of this charge, Joe Wilson, has been proven to be a liar.

After more than a year of misrepresentation and obfuscation, two bipartisan reports from two different countries have thoroughly repudiated Wilson's assertions and determined that President Bush's 16-word statement about Iraq's effort to procure uranium from Niger was well founded.

In fact, the real 16-word statement we should focus on is the one from Lord Butler's comprehensive report about British intelligence. Here is what he had to say:

We conclude that the statement in President Bush's State of the Union address . . . is well founded.

Let me repeat Lord Butler's statement:

We conclude that the statement in President Bush's State of the Union address . . . is well founded.

Those are 16 words to remember.

It is now worth the Senate's time to consider Mr. Wilson's claims.

Claim No. 1 is Wilson's assertion that his Niger trip report should have debunked the State of the Union claim.

On this bold allegation, the Senate's bipartisan report included this important conclusion:

The report on the former Ambassador's trip to Niger, disseminated in March 2002, did not change any analysts' assessments of the Iraq-Niger uranium deal. For most analysts, the information in the report lent more credibility to the original CIA reports on the uranium deal. . . .

Let me repeat:

For most analysts, the information in the report lent more credibility to the original CIA reports on the uranium deal. . . .

Claim No. 2 is similarly egregious.

According to the Washington Post, ''Wilson provided misleading information to the Washington Post last June. He said then that the Niger intelligence was based on a document that had clearly been forged . . . '' But ''the documents . . . were not in U.S. hands until eight months after Wilson made his trip to Niger.''

Predictably, this bombshell appeared on page A9. Page A9, Mr. President. After this story had previously enjoyed extensive coverage on Page A1.

There were indeed document forgeries, but these documents were not the only evidence that convinced foreign intelligence services about Iraq's efforts to purchase uranium.

Damningly, the former Prime Minister of Niger himself believed the Iraqis wanted to purchase uranium and according to the Financial Times:

European intelligence officers have now revealed that three years before the fake documents became public, human and electronic intelligence sources from a number of countries picked up repeated discussion of an illicit trade in uranium from Niger. One of the customers discussed by the traders was Iraq.

And the Wall Street Journal has reported that:

French and British intelligence (services) separately told the U.S. about possible Iraqi attempts to buy uranium in Niger.—7/19/04

Mr. President, when the French corroborate a story that Iraq is seeking WMD, you're probably in the right ballpark.

Indeed, the Senate's bipartisan report concluded that at the time:

it was reasonable for analysts to assess that Iraq may have been seeking uranium from Africa based on CIA reporting and other available intelligence.

Claim No. 3 is Wilson's repeated denial that his wife, Valerie Plame, a CIA analyst, never recommended him for the Niger trip.

In his ironically titled book, The Politics of Truth, Wilson claimed:

Valerie had nothing to do with the matter She definitely had not proposed that I make the trip.

In fact, the bipartisan Senate Intelligence Report includes testimony that Plame ''offered up his name'' and quotes a memo that Plame wrote that asserts ''my husband has good relations with Niger officials.''

The New York Times recently reported that:

Instead of assigning a trained intelligence officer to the Niger case, though, the C.I.A. sent a former American Ambassador, Joseph Wilson, to talk to former Niger officials. His wife, Valerie Plame, was an officer in the counterproliferation division, and she had suggested that he be sent to Niger, according to the Senate report.

That story can be read on Page A14 of the New York Times.

Claim No. 4 is Wilson's allegation that the CIA warned the White House about the Niger claim and that the White House manipulated intelligence to bolster its argument for war. Wilson charged:

The problem is not the intelligence but the manipulation of intelligence. That will all come out despite (Sen.) Roberts' effort to shift the blame. This was and is a White House issue, not a CIA issue.

This reckless charge by Wilson was, we know, repeated by many of the President's critics.

Of course, it is not true. It simply is not true.

The Senate Intelligence Report determined the White House did not manipulate intelligence, but rather that the CIA had provided faulty information to policymakers. And the Washington Post recently reported that ''Contrary to Wilson's assertions the CIA did not tell the White House it had qualms about the reliability of the Africa intelligence.'' (Susan Schmidt, Washington Post, A9, 7/10/04)

Again: Front page news on Page A9.

According to the New York Times and the Senate Intelligence Report, Joe Wilson admitted to Committee staff that some of his assertions in his book may have, quote, ''involved a little literary flair.''

''Literary flair'' is a fancy way of saying what ordinary people shooting the breeze on their front porches all across America call by its real name: a lie. That is what it is.

So, the truth is Joe Wilson did not expose the Administration; in fact, he has been exposed as a liar.

He misrepresented the findings of his trip to Niger, he fabricated stories about recognizing forgeries he never saw, he falsely accused the White House of manipulating intelligence, and he misrepresented his wife's role in promoting him for the mission.

Joe Wilson's false claims have been exposed, but the networks aren't rushing to correct the story. Will NBC correct the 40 times it ran Wilson's claims, will CBS correct the 30 times, will ABC correct the 18?

To be sure, a few networks and newspapers have noted the Senate Intelligence Report conclusions, but where is the balance? Where are the lead stories? Where are the banner headlines? In short, where is the fairness?

Sadly, that is the state of political coverage in this election year. Screaming charges about the President made on A1, repudiation of the charges on A9, if they are made at all. Is that fair?

What of the political campaigns? It's a small wonder the Democrat candidates for President and their supporters aggressively picked up the Wilson claim. After all, the media was driving the train, so why not hitch a ride?

However, now that Wilson's false claims have been exposed, shouldn't a

basic sense of fairness prevail? Shouldn't the partisans admit they were wrong, too?

For example, some of my colleagues in the Senate should ask themselves if it's now appropriate to distance themselves from Joe Wilson's distortions. Speaking on this floor on March 23, the Minority Leader praised Wilson and accused the Administration of retaliating against him:

When Ambassador Joe Wilson told the truth about the administration's misleading claims about Iraq, Niger, and uranium, the people around the President didn't respond with facts. Instead they publicly disclosed that Ambassador Wilson's wife was a deep-cover CIA agent.

Just last month, Senator DASCHLE noted:

Sunlight, it's been said, is the best disinfectant. But for too long, the administration has been able to keep Congress and the American people in the dark . . . other serious matters, such as the manipulation of intelligence about Iraq, have received only fitful attention.

I hope he will acknowledge now the inaccuracy of his statement, and allow the sunlight to shine on Ambassador Wilson's fictions.

Senator KERRY welcomed Wilson onto his campaign team of advisors, and his campaign hosts Wilson's website, which carries a disclaimer that it is ''Paid for by JOHN KERRY for President, Inc.''

The Kerry/Wilson website includes a collection of articles by and about Joe Wilson that propound his baseless allegations against the Bush Administration, which I don't have time to go into today. Suffice it to say that showcasing Wilson's discredited views should at least be met with some acknowledgement that he was wrong all along.

Perhaps we can learn a thing or two from the recent episode involving Sandy Berger.

Berger, an advisor to President Clinton and Senator KERRY stepped down from the Kerry campaign. He's under investigation for removing and possibly destroying classified documents being reviewed by the 9/11 Commission.

Were I to engage in a little literary flair, I might say it seems Sandy walked out of the National Archives with some PDBs in his BVDs, and some classified docs in his socks. At any rate, I think it is appropriate, and politically wise, for him to leave the Kerry campaign.

It is clear Senator KERRY approved of Mr. Berger's departure. He should certainly ask the discredited Mr. WILSON to leave the team as well.

I close with a simple observation. I believe vigorous political disagreements are the heart of a strong democracy. When our debates are rooted in fact, impassioned political disagreement makes our country stronger.

I also believe Americans value fundamental fairness—fundamental fairness—and deserve a news media that reflects this value. How is it fair to report an accusation with blaring page 1 headlines and around-the-clock television coverage and not give a slam-dunk repudiation of the charge the same kind of attention?

We will watch over the next few days to see if fundamental fairness will be met, and if those who championed Mr. WILSON's charges will set the record straight.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished majority whip, the assistant floor leader, for what is an excellent set of remarks, long overdue and very much on point.

I am on the Senate Select Committee on Intelligence. I remember when this whole brouhaha came up, how demeaned the President of the United States was, not only by the media but by this man, Ambassador Wilson, who immediately took great glee in slamming the President because of 16 words that happened to be accurate. We could not talk about it before now, but the British findings show the President was accurate. And I, for one, am very happy for the Butler report and for what came out.

I agree with the distinguished Senator from Kentucky that this was page 1 offensive media to the President of the United States, undermining what he was saying, what he was doing, and what we have backed him on this floor in doing. Now that this man has been caught in these shall I say discrepancies—some might be a lot stronger than that—we see hardly any comments about it. But having said that, I have to say I have been reading the Washington Post, and they have acted quite responsibly. Many of the other media have not acted that way. But the distinguished Senator from Kentucky covered this matter very well.

I feel sorry whenever partisan politics trumps truth, whenever, in the interest of trying to get a political advantage from one side or the other, anybody of the stature of a former Ambassador of the United States would participate in distorting the record, especially when he knew better.

So again, I thank my colleague.

Mr. MCCONNELL. Mr. President, I thank my friend from Utah. Hopefully, this will be the beginning of a wave of coverage both on the networks and in the newspapers on correcting the record and making it clear that Mr. Wilson's assertions are demonstrably false and have been so found by two different important reports.

Mr. HATCH. Mr. President, I thank my colleague. I want to comment that anybody with brains, when they saw that Iraqi team and knew of the Iraqi team—of course, they could not say much about it until now—knew the Iraqi team had gone over to Niger, why else would they have spent the time? Niger had hardly any exportable products other than food, except for yellowcake uranium. Why would they waste their time going to Niger?

I remember at the time thinking: This smells, this argument that the President has misused 16 words and that the CIA should be held totally responsible because those 16 words were wrong. And now we find they were not necessarily wrong. In fact, they were right.

That smacks of this whole matter of partisanship with regard to the current Presidential race. We have our two colleagues on the other side who are now running for President and Vice President who voted for our actions in Iraq. At least one of them spoke out on how serious the actions of the Iraqi regime under Saddam Hussein were, voted for it, and now they are trying to weasel out because they voted against funding it, saying they wanted to get it done right. Well, that is a nice argument, except that we have well over 100,000 of our young men and women over there, and others as well, who are put at risk if we do not fund the effort once it has started.

Secondly, I heard lots of comments from the other side as to weapons of mass destruction. They knew Saddam Hussein had them in the early 1990s. The U.N. knew they had them. Almost every Democrat of substance spoke out that he had them, were concerned about the fact that he had weapons of mass destruction, that he was trying to obtain weapons of mass destruction, including the distinguished candidate for President in the Democratic Party.

And to get cheap political advantage, they have tried to undermine the President of the United States because, so far, we have not been able to discover except small evidences of actual weapons of mass destruction.

What has not been said, for the most part, is any basement in Baghdad, any swimming pool in Baghdad—a city the size of Los Angeles—could store all of the biological weapons necessary to kill a whole city such as Baghdad or Los Angeles and could store all of the chemical weapons that could cause havoc all over the world. The fact we have not found them yet does not mean they are not there.

It does appear the nuclear program Saddam Hussein had authorized in the early 1990s—and had been well on its way to accomplishing the development of a nuclear device—was not as forward advanced as many of us thought. But there is no question they had the scientists in place. There is no question they had the knowledge in place. There is no question they had the documents in place. There is no question he wanted to do that, no question that he would have done it if he could.

I think as time goes on, more and more information will come out that will indicate that the President of the United States has taken the right course, with the help of this whole body. It seems strange to me that so many are trying to weasel out of the position they took earlier in backing the President of the United States and in backing our country and in backing

our soldiers, and are trying to make political advantage out of some of the difficulties we have over there.

Now that political advantage has been tremendously diminished—tremendously diminished—as of the time that jurisdiction was turned over to the Iraqis. They are now running their country, with us as backup to help them, to help bring about the freedoms all of us in America take for granted every day. I doubt they will ever have the total freedoms we take for granted every day, but they have a lot more freedom now than they ever even contemplated or thought possible under the Saddam Hussein regime.

That is because of our country. That is because of our young men and women who have sacrificed. I particularly resent it when, for cheap political advantage, some of our colleagues get up and moan and groan about what is going on over there. Every time they do it, it undermines the very nature of what our young men and women are sacrificing to accomplish.

Fortunately, it is the few who do that. But nobody on this floor on either side should be undermining our young men and women over in Iraq, who are heroically serving, some dying—over 900, as we stand here today.

Cheap political advantage—that is the era we are in, I take it. Both sides from time to time have used efforts to accomplish cheap political advantage, but I have never heard it worse than what I have seen this year against this President. I have never seen a more vicious group of people than the outside commentators who hate President Bush. In all honesty, we can sit back and let these terrorists run around this world and do whatever they want to do and act like it won't affect us or we can take action to try to solve the problem.

It is a long-term problem; it is not a short-term one. It is going to take a lot of courage and good leadership, and it is going to take people who don't just quit and hope they will go away. They are not going to go away. These people are committed ideologues. They are theocratic ideologues. And in many respects throughout the history of the world, that is where most of the really dangerous difficulties come. It is through vicious, radical, theocratic ideologues. Frankly, that is what we are facing. Anybody who thinks this is going to be just an easy slam dunk to resolve has not looked at any of the intelligence, has not thought it through, and really has not spent enough time worrying about it on the Senate floor or otherwise.

I have not always agreed with our President. I probably have been wrong when I haven't. The fact is, I sure agree with him in supporting our troops and supporting freedom in the world. Think about it. If Saddam Hussein had been allowed to go on unchecked, not only would millions of Iraqis be kept in terrible conditions, upwards of a million killed viciously by that regime, but ultimately he would have developed nuclear weapons, as he was trying to do in the early 1990s and came close to doing by everybody's measure who knew anything about it. Had that occurred and we didn't do anything about it, guess who would have had to. And if they had to, as they did in the early 1980s in taking out the nuclear reactor, we would have world war III without question.

So there is a lot involved here. This is not some simple itty-bitty problem, nor is it something conjured up by the President of the United States, nor is it something that really intelligent, honest, bipartisan people should ignore. We need to work together in the best interests of this country and of the world to make sure that these madmen do not control the world and continue to control our destinies and that these madmen don't get so powerful that they can do just about anything they want to in the world. You can see how they try to intimidate just by threats and even action. Well, great countries cannot give in to threats, nor can we give in to offensive action that needs to be dealt with. This country has led the world in standing for freedom.

I have to say that I loved the comment of Colin Powell when somebody in a foreign land snidely accused the United States of attempted hegemony or trying to be imperial. He basically said: Our young men and women have given their lives all over this world for freedom, and the only ground that we have ever asked in return is that in which we bury our dead. That is true to this day. I think if the rest of the world looks at it honestly, they will have to say America really does stand for that principle: freedom and decency and honor and justice, not just in this land but for other lands as well.

Mr. President, as I understand it, we are on the Saad nomination.

The PRESIDING OFFICER (Mr. TALENT). The Senator is correct.

Mr. HATCH. As we begin the debate on this nomination, I want to put it in the larger context of the judicial nomination process.

On May 9, 2001, President Bush nominated 11 outstanding individuals to serve on the Federal bench. I would note that this was months earlier than previous new Presidents, giving the Senate plenty of time to begin considering his nominees. In the 3-plus years—over 1,100 days—since those nominations, the Senate has confirmed only 8 of the first 11 nominees. By comparison, the previous 3 Presidents saw their first 11 appeals court nominees all confirmed in an average of just 81 days following their nomination. We are now 1,100 days past. Not so for President Bush.

While three of his first nominees were confirmed within 6 months, many others waited for 2 years or more before they were confirmed. But even this long wait was better than the fate of the three remaining nominees who have been subjected to filibusters.

One of those, Miguel Estrada, waited for more than 2½ years and became the target of the first filibuster against a judicial nominee in American history. This Hispanic man deserved better treatment, but he was mistreated for crass partisan purposes. Though a bipartisan majority of Senators supported Miguel Estrada, he had to withdraw after an unprecedented seven cloture votes, meaning seven attempts to try and get to a vote where he could have a vote up or down. Those seven cloture votes, any one of which would have ended the filibuster and allowed that vote up or down, he went through seven of them, the most in the history of this country for any judicial nominee. By the way, the only nominees who have ever had to go through cloture votes in a real filibuster or in real filibusters have been President Bush's nominees. We have had cloture votes before, but there never was any question that the nominees were going to get a vote in the end.

Several weeks prior to those first nominations, shortly after President Bush's inauguration, the Democratic leader stated that the Senate minority would use ''whatever means necessary'' to block judicial nominees they did not like. We have seen the fulfillment of that statement as a variety of techniques have been employed to delay or obstruct the confirmation of nominees, including bottling up nominees in committee, injecting ideology into the confirmation process, seeking all unpublished opinions, requesting nominees to produce Government-owned confidential memoranda, repeated rounds of written questions, and multiple filibusters. It is a sad commentary on the deterioration of the judicial confirmation process that we are now approaching double-digit filibusters in the U.S. Senate of 10 judges or more.

Let me reiterate a few points which I made yesterday concerning the process of confirming judges. Despite this range and frequency of obstructionist tactics which we have seen, some of them entirely new in American history, the Senate has confirmed 198 judges during the past 3 years. I will note that this is behind the pace of President Clinton in his first term. And the minority has made even these confirmations as difficult as possible. Yet some of my colleagues think that the constitutional duty to advise and consent has a time clock attached to it and that the time has run out for the Senate to do its duty. I reject this analysis, either that the previous agreement to allow the vote on the 25 judges was the sum total of our work in the Senate or the notion that judicial nominations cannot be confirmed after some mythical deadline is announced.

There are plenty of examples of confirmation of judges in Presidential election years during the fall, some of which occurred during or after the election was held. Stephen Breyer is a perfect illustration. He now sits on the Supreme Court of the United States.

Stephen Breyer was confirmed to the First Circuit Court of Appeals. That is just one example. I was the one who helped make that possible because Reagan had been elected.

The Republicans had won the Senate for the first time in decades. There was no real reason to allow what many thought was a liberal Democrat to be appointed to any court at that point or to be confirmed to any court at that point. But Stephen Breyer was an exceptional man. He not only had been chief of staff to Senator KENNEDY on the Judiciary Committee, and not only was he a Harvard law professor and a brilliant legal theorist, he was a very honest, decent, honorable man. I helped carry that fight. It wasn't much of a fight in the end because the Republicans agreed, and we confirmed Stephen Breyer late in the year after the election took place.

I helped facilitate that confirmation which took place after the November 1980 presidential election. That nomination was made by President Carter, who had just been defeated by President Reagan, and yet we acted on it. I note that Senator Thurmond was the ranking member at that time. Yet his name continues to be invoked as the authority of a binding precedent. I reject the notion of this purported rule and would hope that the service of the longest serving and oldest Member to have served in this body would not be used in the manner I have heard repeated in the committee and on the Senate floor.

Besides, Senator Thurmond was chairman of the committee, and at one time he did say: We have had enough confirmations, and this is what we are going to do. We are going to stop this year.

But even then he didn't.

Under the Senate Democrats' theory, the Senate has apparently confirmed enough judges. The remaining vacancies, half of which are classified as judicial emergencies because of the backlog, just don't seem to matter to them. According to their analysis, because of some acceptable vacancy rate or because of the mythical time clock, the remaining 25 judges pending before the Senate should be dismissed out of hand. This is not logical, nor is it the proper approach to take under the Constitution.

I will also respond to some of the arguments made that Senate Democrats have only rejected six or seven nominees. The fact is, the Senate has not rejected the nominees which have been filibustered. If they have the votes to defeat the nominee, then let those votes be cast and let the results stand. But a minority of Senators are denying the Senate from either confirming or defeating some of these nominees. That is what we are seeking today—an up or down vote.

Mr. President, unfortunately, one of the battlegrounds of this judicial obstructionism has been the Sixth Circuit Court of Appeals. Despite President Bush's attempt to fill four critical vacancies on that court, and two district vacancies in Michigan, these nominations remained stalled in the Senate. There are many factors contributing to the stalemate we have found ourselves in with regard to confirmations on the Sixth Circuit, some of which go back to the Clinton administration. I will discuss that in detail at a later point, but for now, everyone knows that I have been working to reach an accommodation that would help move this process forward.

I have great respect for Senators LEVIN and STABENOW. I have worked for many years with Senator LEVIN and have reached agreements with him on many difficult issues. For example, Senator LEVIN and I worked with Senators BIDEN and MOYNIHAN to dramatically revise the regulations pertaining to heroin addiction treatment. That effort is paying off. I remain hopeful that we can do so here.

On this issue, I have continued to work with Senators LEVIN and STABENOW. I have carefully listened to their concerns. And while the Michigan Senators' negative blue slips were accorded substantial weight—that is why this has taken so long—I delayed scheduling a hearing on any of the Michigan nominees because of the Michigan Senators' views. Their negative blue slips are not dispositive under the committee's Kennedy-Biden-Hatch blue slip policy. It was started by Senator KENNEDY, confirmed by Senator BIDEN, and I have gone along with my two liberal colleagues on the committee.

I don't think there is any doubt that I have attempted to reach an accommodation that would fill these seats. Unfortunately, my efforts have not been successful. I remain hopeful that we can come to a resolution, and I will keep trying to do so. But I must emphasize, in my view, integral to any accommodation is the confirmation of Judge Saad, Judge Griffin, and Judge McKeague—at least votes up or down. Since they have a majority of people in the Senate who would vote for them, I believe they would be confirmed in the end.

These are exceptional individuals. Judge Saad and Judge Griffin both serve on the Michigan Court of Appeals. Judge McKeague is a district Judge for the United States District Court for the Western District of Michigan. He was unanimously confirmed by the U.S. Senate.

It has been nearly 1 year since the Judiciary Committee first considered the nomination of Henry W. Saad, who has been nominated for a position on the United States Court of Appeals for the Sixth Circuit. This is an historic appointment. Upon his confirmation, Judge Saad will become the first Arab-American to sit on the Sixth Circuit, which covers the States of Kentucky, Ohio, Tennessee, and Michigan.

It is long past time for the Senate to consider Judge Saad's nomination. He was first nominated to fill a Federal judgeship in 1992, when the first President Bush nominated him for a seat on the United States District Court for the Eastern District of Michigan. The fact that he did not get a hearing may have worked to his benefit, since he was appointed in 1994 by Governor Engler to a seat on the Michigan Court of Appeals. He was elected to retain his seat in 1996 and again in 2002, receiving broad bipartisan support in each election.

On November 8, 2001, President Bush nominated Judge Saad for a seat on the Sixth Circuit, the position for which we are considering him today. When no action was taken on his nomination during the 107th Congress, President Bush renominated him to the Sixth Circuit on January 7, 2003. All told, Judge Saad has been nominated for a seat on the Federal bench three separate times. It is high time the Senate completed action on his nomination.

Judge Saad's credentials for this position are impeccable. He graduated with distinction from Wayne State University in 1971 and magna cum laude from Wayne State University Law School in 1974. He then spent 20 years in the private practice of law with one of Michigan's leading firms, Dickinson, Wright, specializing in product liability, commercial litigation, employment law, labor law, school law and libel law. In addition, he has served as an adjunct professor at both the University of Detroit Mercy School of Law and at Wayne State University Law School.

Judge Saad is active in legal and community affairs. Some of the organizations he has been involved with include educational television, where he serves as a trustee, the American Heart Association, Mothers Against Drunk Driving, and other nonprofit organizations that serve the elderly and impaired. As a leader in the Arab-American community, Judge Saad has worked with a variety of organizations in promoting understanding and good relations throughout all ethnic, racial, and religious communities. He is an outstanding role model.

Judge Saad enjoys broad bipartisan support throughout his State, as evidenced by endorsements in his last election by the Michigan State AFL–CIO and the United Auto Workers of Michigan. He has received dozens of letters of support from leading political figures, fellow judges, law professors, private attorneys, the Michigan Chamber of Commerce, and a variety of other groups.

Let me quote from just a few of the letters received in support of Judge Saad's nomination. Maura D. Corrigan, Chief Justice of the Michigan Supreme Court, wrote: ''Henry Saad has distinguished himself as a fair-minded and independent jurist who respects the rule of law, the independence of the judiciary, and the constitutional role of the judiciary in our tripartite form of government. . . . Judge Saad is a public servant of exceptional intelligence

and integrity. He has the respect of the bench and the bar.'' Other judges have written that he is ''a hard-working and honorable individual'' and that he is ''an outstanding appellate jurist with a strong work ethic.'' Roman Gribbs, a lifelong Democrat and retired judge, wrote, ''Henry Saad is a man of personal and professional integrity, is fair-minded, very conscientious and is above all, an outstanding jurist.'' Judge Saad has clearly earned the respect and admiration of his colleagues on the Michigan State court bench. His nomination deserves consideration by this Senate.

I hope that our consideration of Judge Saad's nomination is not overshadowed by collateral arguments about the propriety of his nomination, the committee blue slip process, an attack on his personal character and qualifications, or other diversionary arguments. The question before the Senate is the qualifications of Judge Saad to sit on the Federal bench.

We have heard from the other side about the President just steamrolling these nominations, without consulting with the home state Senators.

Mr. SESSIONS. Mr. President, I join the distinguished chairman of the Judiciary Committee, Senator HATCH, in supporting Henry Saad for the U.S. Circuit Court for the Sixth Circuit. He is an exceptionally qualified nominee who has great support in his area. He graduated with distinction from Wayne State University and then magna cum laude at Wayne State University School of Law. He has served for a decade on the Michigan Court of Appeals. He was nominated for this position by former President Bush 10 years ago and was held up, blocked, and did not get a hearing, and now he is back and being held up again.

He has the necessary experience to serve. He has been active in his community. He is a Heart Association board member, Oakland College Community Foundation chairman, member of the board of the Judges Association, Michigan Department of Civil Rights hearing referee. He is a Community Foundation of Southeast Michigan board member. He has written a number of articles on subjects such as employment discrimination, AIDS in the workplace, libel standards, and legal ethics. He has given a number of speeches, primarily on appellate advocacy. He has been nominated for a position as an appellate judge, so this is good experience. Appellate judges do not try cases, as the Presiding Officer knows. Appellate judges review trials that went on before. They review briefs carefully and they hear arguments from attorneys involved in a case and who have written briefs in summary, and then they make written rulings to decide whether the trial was properly tried or not. We need him on this circuit.

I have to share some thoughts about this matter because it is important and something smells bad. It is not good what has occurred with regard to this nominee and other nominees to the Sixth Circuit. There has been an orchestrated effort to block rule of law nominees for some time now.

The House of Representatives had hearings on this matter some time ago and was highly critical about what has occurred. Frankly, I am not sure we fully know the story yet of all that occurred. Let's take recent history when the Democrats were in the majority in the Senate and they controlled the Judiciary Committee and could decide what nominees came up for vote.

The Democrats made a number of questionable decisions, and they took care of some outside groups, and they took certain steps that were quite significant. A number of nominees were delayed or blocked. As I recall, even then there were four, maybe six, vacancies in this circuit. Right now, 25 percent of the circuit is vacant. It is an emergency situation, according to the courts, because we have so many vacancies there.

Thirty-one assistant United States attorneys—these are the prosecutors who try cases every day, not a political group, but a group of workhorse attorneys trying cases—have expressed concern about the failure to fill these appointments and how long it takes their criminal appeals to be decided. But I want to share this with my colleagues because I think we might as well talk about it. I wish it had not happened, but it has.

Take the case of Julia Gibbons of Tennessee. She was a very talented nominee to the Sixth Circuit early on. When the Democrats were in control of the Judiciary Committee, her nomination in 2001 was mysteriously slowed down. It did not move. At one point in March of 2002, Senator MCCONNELL spoke on the floor, and he complained that she had waited 164 days and never had a hearing, and we wondered what was going on and why this fine nominee was being held up.

We now know through the release of internal memos that were published in newspapers, in the Wall Street Journal and other places that discussed this case, what happened. Frankly, I do not think these memos should have been made public—under the circumstances, they were, based on what I know. But things leak around here. That is the way it is. I have to share with this body what occurred.

What we know is that in April of 2002, there was a staff memorandum to Senator KENNEDY from his staff that indicates that the NAACP, which was a party to a Sixth Circuit case, the Michigan affirmative action case to be exact, that they considered to be an important case—this is what the memorandum says: That the NAACP

> would like the Judiciary Committee to hold off on any Sixth Circuit nominees until the University of Michigan case regarding the constitutionality of affirmative action in higher education is decided by the en banc, Sixth Circuit. . . .
>
> The thinking is that the current Sixth Circuit will sustain the affirmative action program, but that if a new judge with conservative views is confirmed before the case is decided, the new judge will be able . . . to review the case and vote on it.

The Kennedy memorandum further states that some ''are a little concerned about the propriety of scheduling hearings based on the resolution of a particular case. We are also aware that the Sixth Circuit is in dire need of judges.''

The memorandum goes on to conclude:

> Nevertheless we recommend that Gibbons be scheduled for a later hearing: The Michigan case is important.

Even though it was understood to be wrong to influence the outcome of a pending case, it was recommended that Gibbons be delayed.

Now, people like to suggest that the holdup in these nominations is some flap with the home State Senators, that it is tit for tat. I remember a good friend who former President Bush nominated, John Smietanka, for this circuit. He was blocked. He was a wonderful nominee, a saintly person really, a great judge. He was blocked, so they say this is all tit for tat, but I do not think so.

I am afraid what really is at work is this circuit was narrowly divided. In fact, as I recall, the University of Michigan case was decided by one vote. Had the new judge been confirmed and voted the other way, it would have been a tie vote. That verdict would not have come out as it did. So I think there is an attempt to shape the makeup of this court. Let's not make any mistake about this whole issue. The judiciary debate is not about politics; it is not Republican versus Democrat. This debate is about the beliefs, the value judgment, and the legal philosophy of President Bush, and I dare suggest a vast majority of American citizens. President Bush and the American people believe that judges should be bound by the law, they should follow the law, they should strictly follow the law, and that unelected, lifetime appointed Federal judges are not in power to set social policy because they are unaccountable to the public. So that is the big deal.

There are people who believe otherwise. There are people who can no longer win these issues at the ballot box, if they ever could. They want judges to declare things that they do not want to have their fingerprints on, like taking God out of the Pledge of Allegiance. These are activist decisions. So I believe this is a matter far deeper than just Republican versus Democrat; it represents a debate about the nature of the American judiciary—do we stay true to an Anglo-American tradition that judges are not political, that they are independent, that they wear that robe to distinguish themselves from the normal person, that they isolate themselves from politics, and that they study the law and rule on the law?

That is what I believe a judge ought to do. That is the ideal of American law. It is very important that we maintain that.

When we have nominees held up explicitly to affect the outcome of a case that might come before them, a very important and famous case, indeed perhaps the most significant case that year—maybe even in the last half-dozen years—to be shaped and blocked simply because of that case is bad. In fact, after the case was over, Judge Gibbons was confirmed 95–0 by this body. There never was any objection to her other than they were afraid it would affect the outcome of the case.

There are vacancies on the Sixth Circuit. The President is empowered to make the appointments. He is empowered to make the appointments according to the legal philosophies and principles he announced to the American people when he ran for office. President Bush declared that he was going to nominate and fight for judges who would follow the law, not make law, who would show restraint, who would be true to the legitimate interpretation of the statutes and the Constitution, not using that document to further promote their own personal agendas. That is what he has done, and that is what Judge Saad's record is. He is not going to impose his values on the people of the Sixth Circuit. That is not his philosophy of judging. His philosophy is to follow the law, not to make the law. We have no fear of that kind of judge. We ought to confirm him.

The people of this Nation need to know that the Democratic leader, Senator DASCHLE, and the Democratic machine is time after time mustering 40 votes to block these nominees from even getting an up-or-down vote. In fact, when we vote on cloture to shut off debate and we have to have 60 votes, we are constantly getting 53, 54, 55 votes for these nominees, which is more than enough to confirm them, but we cannot shut off the debate and get an up-or-down vote. So by the unprecedented use of the filibuster, these judges are not getting an up-or-down vote. I say to the American people, they need to understand this. I believe the rule of law in this country is jeopardized by the politicization of the courts. We must not allow that to happen. I believe the collegiality and traditions of this Senate are being altered. There is no doubt we have not had filibusters of judges before. In fact, about 4 years ago, Senator LEAHY was denouncing filibusters when President Clinton was in office, and now he is leading it. The ranking member of the Judiciary Committee is leading a host of filibusters. It is an unprincipled thing.

I remember Senator HATCH, as chairman of the Judiciary Committee and a guardian of the principles and integrity of the Senate, on many occasions told Republicans when they said, Well, we do not like this judge, we ought to filibuster him, why do we not filibuster him, and he said, You do not filibuster judges; we have never filibustered judges; that is the wrong thing to do. And we never filibustered President Clinton's judges.

I voted to bring several of them up for a vote and cut off debate even though I voted against those judges because they should not be on the bench. I did not vote to filibuster the judge, and I think that is the basic philosophy of this Senate.

I hope we will look at this carefully. These nominees are highly qualified. They are highly principled. Many of them have extraordinary reputations, like Miguel Estrada, Judge Pickering, Bill Pryor, and Priscilla Owen from Texas, a justice on the Texas Supreme Court who made the highest possible score on the Texas bar exam. These are highly qualified people who ought to be given an up-or-down vote. If they were given an up-or-down vote, they would be confirmed just like that.

Unfortunately, we are having a slowdown, unprecedented in its nature. If this does not end and we cannot get an up-or-down vote on these judges, those of us on this side need to take other steps. And we will take other steps. We need to fight to make sure that the traditions of this Senate and the constitutional understanding of the confirmation process are affirmed and defeat the political attempts to preserve an activist judiciary that our colleagues, it appears, want to keep in power so that they can further their political agenda, an agenda they cannot win at the ballot box.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS SPENDING BILL

Mr. BYRD. Madam President, there are only 22 legislative days left in this fiscal year. The Senate seems to be frittering away those precious days. To date, the Senate has only passed one appropriations bill, the Defense bill. Only four bills have been reported from the Senate Appropriations Committee.

The House has passed nine appropriations bills, but apparently the Senate would rather work on political messagemaking than to take care of the Nation's vital business. So I fear, once again, that the Senate Republican leadership is setting a course for a massive omnibus spending bill. That is what it looks like. That is what we are going to do, have a massive omnibus spending bill, in all likelihood.

This year, with the failure of the Senate Republican leadership to even bring the Homeland Security bill before the Senate, the Omnibus appropriations bill may include as many as 12 of the 13 annual appropriations bills. That is very conceivable to ponder.

On July 8, Homeland Security Secretary Tom Ridge and FBI Director Robert Mueller announced that another terrorist attack is likely before the November elections, yet the Homeland Security appropriations bill, which the committee reported 4 weeks ago, has not even been presented to the full Senate for its consideration. What is wrong? What is wrong with this picture? Talk about fiddling while Rome burns. The flames are all around us.

The Senate Republican leadership is setting the stage for another one of these massive spending bills that may be brought up in the Senate in an unamendable form. And one shudders to think what will go on behind closed doors. Who among the 100 Senators will be in the meetings that produce a massive bill that appropriates over $400 billion for veterans, education, homeland security, highways, agriculture, and the environment? Who among the 100 Senators will be in the meetings when decisions are made about including provisions on drug importation, gun liability, farm bill issues, nuclear waste storage at Yucca Mountain, overtime rules, or on the outsourcing of government services? Does anybody know?

And, who knows what surprises, that were never debated or even contemplated in the Senate, will find their way into such an omnibus? What kind of interesting bugs will crawl into this big bad apple of a bill? I cannot tell you how many Senators will be in the room, but I can assure you of one thing. The White House will be there. You can bet on that. They will be there with their pet projects and their pet peeves and their opportunities to move certain items into their favorite States—doing their bidding, legislating right along with the Senators. They will be there. White House bureaucrats and soothsayers will suddenly become legislators for a day, or perhaps several days.

That is not the way our Constitution contemplated the writing of appropriations bills. The Framers believed that Congress ought to have the power of the purse. This White House would like to have it. They would like very much to have it. But all of those constitutional niceties get blurred and blended when it comes time to deal on Omnibus appropriations bills. The checks and balances gets thrown out the window when it comes time to deal with Omnibus appropriations bills.

One could conclude that the only thing the President wants from the fiscal year 2005 appropriations bill is the Defense appropriations bill. That is the only thing the President would want from the 2005 appropriations process—the Defense appropriations bill.

On June 24, 2004, in its Statement of Administration Policy, the White House urged the Congress to pass the Defense bill before the start of the August recess. Why?

In February, the President did not ask for one thin dime, not one thin dime did he ask for as far as the costs

of the war in Iraq—nothing. Administration officials had the temerity to insist that the costs of the war were not knowable. Then suddenly, on May 12, 2004, the President saw the light and realized that he needed more money for the war in Iraq. It must have come to him in a sudden vision. So, like a teenage driver, he put the foot on the gas and insisted that the Congress give him a $25 billion blank check for the escalating costs of his war in Iraq.

With the help of Senator STEVENS of Alaska, the blank check got canceled, but the defense conference report will include the $25 billion in additional funds. The President will get the one thing he wanted out of this year's appropriations process; he will get the Defense appropriations bill.

So I must ask the American people, why is it the President has not sent messages to the Congress urging prompt action on the bill that funds the veterans health care system? I am sure the veterans are concerned about what is going to happen with respect to their needs.

Moreover, does the President not know that the bill that funds our Nation's schools is stuck in subcommittee? What about the appropriations bill that funds our highway system that has not yet been considered by the House or the Senate? In February, the President proposed to put a man on Mars, but the bill that funds the space program has not been marked up by either the House or Senate appropriations committees.

According to President Bush, Congress must urgently send him the Defense appropriations bill; but for all of the other appropriations bills, the attitude is ho hum; so what.

According to the administration, we are facing another terrorist attack. Are we not even going to debate whether a 5-percent increase for the Department of Homeland Security is enough?

Last year, we fell prey to a 7-bill omnibus, but at least the Senate debated as freestanding bills 12 of the 13 bills. Now we are down to only one debate this year on the Defense bill. That is one bill, and only one debate this year, on the Defense bill.

Where do we go from here on funding the needs of the people? One of the options that has been discussed by the Republican leadership is to pass the full-year continuing resolution and leave town, get out of town, catch the next train, all aboard. That is right. The exalted servants of the people may just decide to enjoy a summer vacation if some in the Republican leadership have their druthers. What does it matter if all of the Federal Government, except the Pentagon, operates on automatic pilot for a full year? Who needs guidance from the Congress on the priorities? Who needs careful scrutiny of Federal programs? What about the new initiatives? Shouldn't they be under careful scrutiny? Shouldn't questions be asked and questions answered?

Let me give you, my colleagues, a few examples of what would happen under a full-year continuing resolution. If that is what you want, I tell you what you are going to get.

If the Senate Republican leadership refuses to allow the Senate to debate the Homeland Security appropriations bill, important funding in new programs would not be available to the Department.

As we all know, on March 11, 2004, nearly 200 people were killed by a series of bombs detonated on the transit system in Madrid, Spain. The Department of Homeland Security responded by sending out a list of security recommendations for mass transit and rail systems in the United States. These recommendations included moving garbage cans and asking commuters to be more alert to suspicious people and packages, like unattended backpacks. However, despite my efforts, no moneys were approved for fiscal year 2004 for mass transit or rail security. Are we comatose in the Senate? Perhaps we better reach back in our desks somewhere and get our living wills.

On an average workday, 32 million people travel on mass transit. Get that, 32 million people travel on mass transit on an average workday. However, under a continuing resolution, there would be no funding to help secure our mass transit and rail systems. There would be no funds for additional law enforcement presence, no funds for additional K–9 teams, no funds for additional surveillance, no funds for additional public education about the threat. Is that OK with the Senate?

Following the tragic events of September 11, the administration established a firm goal for the number of Federal air marshals so that a high percentage of critical flights could be protected. The exact number of air marshals is classified, but the fact is, the Federal air marshals program has never reached the staffing level called for in the wake of the September 11 attacks.

Instead, the White House has allowed the number of air marshals to fall by 9 percent, falling far below the goal. As air marshals leave the program, budget constraints prohibit the hiring of replacements. The number of air marshals continues to dwindle and the number of critical flights they are able to cover remains on a steady downward spiral. If forced to operate under a continuing resolution, the number of air marshals protecting domestic and international flights could fall by another 6 percent, putting Americans in greater danger. How can we contemplate such irresponsibility? Doesn't public safety count?

How about funding for our Nation's schools? Two and a half years ago the President promised to leave no child behind. The No Child Left Behind Act authorized $20.5 billion in fiscal year 2005 for title I, the Federal program designed to help disadvantaged students in kindergarten through high school, those students who are most at risk of being left behind. A continuing resolution would freeze title I funding at just $12.3 billion. That would leave behind 2.7 million students who would not receive the title I services that were promised to them in the No Child Left Behind Act.

A continuing resolution would also freeze funding for special education. Two months ago, the Senate voted overwhelmingly by a vote of 96 to 1 to authorize a $2.3 billion increase for the Individuals With Disabilities Education Act—better known, perhaps, as IDEA—in fiscal year 2005, and fully fund the law within 7 years. A CR would put the lie to that pledge.

As candidate for President in 2000, President Bush said:

> College is every parent's dream for their children. It's the path to achievement. We should make this path open to all.

But, my dear friends, under the Bush administration, the cost of tuition has gone up by 26 percent, making it harder and harder for low- and middle-income students to pursue that dream.

The Pell grant: A maximum Pell grant now covers only 34 percent of the average annual cost of college compared to 72 percent in 1976. Under a continuing resolution, there would be no increase in the maximum Pell grant now set at $4,050. There would be no increases for the College Work-Study Program or for other campus-based aid programs. So much for dreams, so much for promises, so much for empty talk.

For the construction and restoration of our Nation's highways and bridges, a long-term continuing resolution would stifle the flow of billions of new dollars going to our States to improve safety conditions, minimize congestion, and create badly needed jobs.

Just this past February, more than three-quarters of the Senate, 76 Senators, approved a surface transportation bill that called for an overall commitment of highway funds for fiscal year 2005 of $37.9 billion. Under a long-term continuing resolution, highway funding would be $4.25 billion less than that amount, a $4.25 billion shortfall. That difference represents more than 200,000 jobs across America, jobs that are desperately needed all across our States. But the Senate is in gridlock, much like the gridlock on our Nation's highways.

Our Nation's military is serving gallantly in Iraq and Afghanistan, but under a continuing resolution the Veterans Health Administration, unbelievably, would get drastically reduced health care services for our fighting men and women. Approximately 237,000 veterans would not be able to receive care, and veterans outpatient clinics would schedule 2.6 million fewer appointments. The waiting list for veterans seeking medical care would grow to over 230,000. What a way to treat our brave men and women. Shabby and shameful are the two words that come to mind.

Al-Qaida operatives are in the United States preparing for another terrorist

attack. The FBI must mobilize to find those terrorists before they attack us. But a full-year continuing resolution would force the FBI to freeze all hiring in fiscal year 2005. That would result in the FBI losing 500 special agents and negating the proposed increase of 428 special agents. Nor would the FBI be able to fund any of the new initiatives proposed in the fiscal year 2005 budget request, including resources for the new office of intelligence counterterrorism investigations, counterintelligence, and fighting cyber crime.

Another casualty of a full-year continuing resolution would be programs to combat HIV/AIDS, particularly in eastern Europe and Asia where the epidemic is spreading out of control. Only one in five people worldwide have access to HIV/AIDS prevention programs. Yet a continuing resolution would reduce funding for those programs by almost half a billion. That means there would be hundreds of thousands of new infections of the deadly virus—infections that could have been prevented, lives that could have been saved.

The list goes on and on and, like Tennyson's book, goes on. Members of this Congress have a duty and a responsibility to the American people. They do not want us to approve massive omnibus spending bills that no one has bothered to read. They do not want us to pass mindless continuing resolutions that put the Government on automatic pilot and their safety on the line. They do not want us to cash our own paychecks without doing the work we were sent here to do.

We are paid to debate legislation. We are paid to make careful choices on behalf of the people. The elections are coming, and if we are not going to do our work, then we should not claim the title of Senator. Just like Donald Trump, come November, the American people might decide to send us a very straightforward message: You're fired.

Last week, the Republican leadership jammed into the defense conference report a provision ''deeming'' the level of spending for fiscal year 2005 at the level in the budget resolution conference report. It seems now we are ''deeming'' our way through budget debates. ''Deeming''—this provision was not contained in the Senate or House version of the Defense bill. It was not debated here on the Senate floor. Yet this innocuous-sounding ''deeming'' provision will have far-reaching consequences. That provision will result in appropriations bills that inadequately fund homeland security, education, veterans, transportation, and other programs to meet domestic needs. And the consequences are not just on paper. The American public is being cheated year after year by the steady erosion of money available to fund the public's priorities. They are being ''deemed'' down the river.

This year, even while the directors of Homeland Security, the FBI, and the CIA are warning us of al-Qaida in our midst, we still are unaccountably and stubbornly sitting on the Homeland Security appropriations bill as if in total defiance of the dangers to our country and to the people's safety.

None of this is the fault of our able Appropriations Committee chairman, Senator TED STEVENS. Early on, I encouraged Chairman STEVENS to move 13 freestanding, fiscally responsible appropriations bills through the committee and on to the Senate floor. Senator STEVENS instructed his 13 subcommittee chairmen to produce balanced and bipartisan bills; however, the Senate Republican leadership has refused to free up floor time for the appropriations bills.

I will not be a party to such chicanery, and I implore the leadership of this body to stop the games and stop the politics. And I ask the majority leadership to set aside the pending business and proceed to the consideration of Calendar Order No. 588, H.R. 4567, the fiscal year 2005 Homeland Security appropriations bill.

Madam President, I yield the floor.

Mrs. FEINSTEIN. Madam President, I echo the comments of Senator BYRD, the ranking member of the Appropriations Committee. While I do not have the perspective of his years of service in the Senate and on the Appropriations Committee, I share his concern about the breakdown we are seeing in this year's appropriations process.

There are only 2 days left before the Senate leaves for an extended August recess. Yet the Appropriations Committee has reported out only 4 of the 13 appropriations bills we must pass this year. The Senate has passed only one Appropriations bill—the Defense Appropriations bill. This is a dereliction of our primary duty in the Senate, funding the functions of Government.

The blame for this situation does not go, in my view, to the Appropriations Committee. In the limited work the committee has done this year, it has operated in an efficient, bipartisan manner. But we all know that the committee has been hampered by the failure to enact a budget resolution.

A budget is a clear articulation of priorities. We are having these problems because of a failure to prioritize, or because of skewed priorities. As we all know, the Congressional Budget Office is projecting a $477 billion deficit in fiscal year 2004.

But some in the Congress continue to believe that more tax cuts should be the priority in this Congress. And they refuse to subject these tax cuts to the discipline of pay-as-you-go rules, which would require offsetting revenue increases, or spending cuts.

They insist that we can balance the books by ''controlling'' nondefense, nonhomeland security, discretionary spending. Yet, no one has shown any inclination to significantly cut discretionary spending. Just the opposite. As BILL YOUNG, the chairman of the House Appropriations Committee notes:

No one should expect significant deficit reduction as a result of austere non-defense discretionary spending limits. The numbers simply do not add up.

The notion of balancing the budget, while further reducing revenue, is simply wrong-headed. Or, as Chairman YOUNG succinctly puts it, ''the numbers simply do not add up.''

The Senate is scheduled for 19 legislative days after August. It does not appear that there is much hope for completing our appropriations work in that time. Indications in the media from the chairman and from the Republican leadership are that we will be faced with moving an omnibus appropriations bill when we return, possibly with some bills held over for a lame-duck session of Congress. That is a terrible way to do business, and I sincerely hope it does not come to that.

In the remaining 2 days before we recess, I am hopeful that we can at least take up my subcommittee's bill, the military construction bill. The subcommittee chairman, Senator HUTCHISON, and I have worked well together to craft a good bill with the support of Senators STEVENS and BYRD. I believe that it deserves the support of the full Senate.

And when the Senate reconvenes, in September, I hope that we on the Appropriations Committee will work efficiently, and on a bipartisan basis, to report freestanding bills to the Senate.

Mr. BYRD. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. DOLE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. CORNYN pertaining to the submission of S. Res. 413 are printed in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER. The Senator from Michigan.

(Mr. CORNYN assumed the Chair.)

Ms. STABENOW. Mr. President, I rise today to express deep disappointment about what is taking place on the Senate floor in the cloture vote scheduled for tomorrow. For the past 3½ years, Senator LEVIN and I have been urging the Bush administration to work with us to develop a bipartisan solution regarding the Michigan nominees to the Sixth Circuit Court. We have met on several occasions with Judge Gonzales, the current White House counsel, and other White House staff, but the White House has rejected all of our efforts at a compromise. We also had numerous meetings with Chairman HATCH and testified before the Senate Judiciary Committee several times on the need for a bipartisan solution.

Chairman HATCH had expressed a willingness to work with us and to work with Senator LEAHY on a bipartisan solution to this impasse, but it seems these efforts have been abandoned by Republican leadership in

favor of scoring political points before the party conventions.

I still believe the best way to end this impasse is to forge a compromise. I hope the Bush administration and the Republican leadership will not continue down this road of what appears to be politically motivated and partisan cloture votes instead of working with us to develop a fair solution. A ''nay'' vote on cloture will preserve potential negotiations toward the bipartisan compromise we have been seeking. A ''yea'' vote will destroy these efforts and, unfortunately, be a vote for preconvention politics.

Let me start by saying a few words about Judge Saad's nomination. Judge Saad is before us now. After listening to people in Michigan who have shared serious concerns with both Senator LEVIN and I, and having had an opportunity to review the FBI background materials, I have to say that I have serious concerns about Judge Saad's temperament and appropriateness for serving on this important bench. While I cannot go into specifics, I urge my colleagues to review the Judiciary Committee's FBI background materials for themselves.

Judge Saad's lack of fitness for this appointment is also evidenced in the record he has put together as it relates to his work on the Michigan Court of Appeals. Most troubling, perhaps, are his decisions and reversals in cases involving the application of the law in civil rights cases—particularly in sexual harassment cases.

His decisions also demonstrate hostility to the rights of whistleblowers. We know in this day and age, as we have learned through those who were courageous and came forward in the Enron and Halliburton cases, and others where employees have come forward, how important it is to be able to protect the rights of employees who see that something is wrong and they step forward. They are what we call whistleblowers.

His decisions also have been hostile to the rights of people who are injured. For example, in Coleman v. State, Judge Saad joined in deciding against the plaintiff in a sexual harassment case, which was later reversed by the Michigan Supreme Court. Coleman, a State prison employee, was subjected to comments by her supervisor about her allegedly provocative dress and to daily inspections of her clothing, after she was the victim of an attempted assault and rape by an armed prison inmate. She was the one who was questioned, as too often we hear as it relates to women who are told it was their fault, because of the way they dress, and that is why they were assaulted. The Michigan Supreme Court reversed the decision, holding that there was sufficient evidence for the victim to go to trial.

In Haberl v. Rose, Judge Saad dissented from the court of appeals' reinstatement of a jury verdict for the plaintiff who was injured by a Government worker who was doing Government work but driving her own automobile.

In the complicated case, the majority found that Michigan's sovereign immunity statute was not applicable, since a more specific civil liability statute said that car owners are not immune from liability. Car owners have liability in these kinds of cases.

The dissenting Judge Saad stated that the sovereign immunity statute applied but the civil liability statute did not and, thus, the injured plaintiff could not recover.

Judge Saad was harshly criticized for his dissent by the majority of the judges, who essentially called him a judicial activist:

> Indeed, it is the dissent that urges ''rewriting'' the statutes in question and advocates overstepping the bounds of proper judicial authority.

Based on these concerns, I do not believe Judge Saad has the necessary judicial temperament to serve a lifetime appointment—a lifetime appointment—on the Sixth Circuit Court of Appeals.

Mr. President, I wish to speak more broadly now about the process of bringing the Sixth Circuit nominees to the floor of the Senate. Senator LEVIN has spoken eloquently about the history of the Sixth Circuit nominees prior to my serving in the Senate. He has explained how two extremely well-qualified women—Judge Helene White and Kathleen McCree Lewis—failed to get a hearing before the Judiciary Committee for more than 4 years and 1½ years, respectively, during the previous administration.

In fact, if she had been confirmed, Kathleen McCree Lewis would have been the first African-American woman on the Sixth Circuit Court of Appeals.

Senator LEVIN and I are not alone in the view we hold that what occurred with respect to these nominees was fundamentally unfair.

On more than one occasion, Judge Gonzales, the current White House counsel, has acknowledged that it was wrong for the Republican-led Senate to delay action on judicial nominees for partisan reasons, at one point even calling the treatment of some nominees during the Clinton administration ''inexcusable.''

Senator LEVIN and I have repeatedly proposed to settle this longstanding conflict by appointing a bipartisan commission to make recommendations to the White House on judicial nominations.

Our proposal would be based on the commission that is set up and working just across Lake Michigan in Wisconsin. The State of Wisconsin commission has produced bipartisan nominees for both district and circuit courts since its inception under the Carter administration.

In fact, just recently, the Senate confirmed Judge Diane Sykes for a vacancy on the Seventh Circuit Court of Appeals. Judge Sykes, a Bush administration nominee, was recommended by the bipartisan Wisconsin commission and had the support of both of her Democratic home State Senators.

This process works. The Wisconsin commission includes representatives from the Wisconsin Bar Association, the deans of the State's law schools, as well as members appointed by both Republicans and Democrats. They only recommend qualified candidates who have the support of the majority of the commission. The President then looks to the recommendations of the commission when making his nominations.

The Wisconsin commission's recommendations have always been followed by the President, regardless of political party. Again, this system has worked.

This type of commission preserves the constitutional prerogatives of both the President and the Senate. It allows the President to pick one of the recommended nominees and protects the Senate's advise and consent role.

Wisconsin is not the only State where this type of bipartisan commission works. In a similar form, it has worked in several other States, including Washington, California, and Vermont.

Unfortunately, the White House continues to reject this proposal from Michigan, despite having agreed to similar commissions in other States with other Democratic Senators.

Senator LEVIN and I are interested in finding a real bipartisan solution to this problem. We have stated on numerous occasions that we are willing to accept the commission's recommended nominees, even if they do not include Helene White and Kathleen Lewis, or any other person we would choose if it were up to us.

Instead of divisive cloture votes, let's look to the future and restore civility to this process. It is time to do that with the Sixth Circuit.

I hope we can still accomplish this and that the Bush administration and Chairman HATCH will work with us to develop a fair compromise to this longstanding problem.

Let me take a moment to reiterate this is not about being unwilling to fill vacancies. As other colleagues have indicated, we have, in fact, confirmed 198 judicial nominees of this President, and I have voted for the overwhelming majority of those nominees. This is more judicial nominees than were confirmed for President Reagan in all 4 years of his first term, more nominees than were confirmed for first President Bush during his 4-year Presidency, and for President Clinton in all 4 years of his second term. Mr. President, 100 judges were confirmed in the 17 months of the Democratic Senate majority.

So under Democratic control, we confirmed 100 judges, and we were only in the majority for 17 months of the last almost 4 years. Now, 98 more judges have been confirmed in the 25 months of Republican leadership. In other words, the Democrats were in the majority less time and confirmed more

judges for this President during the last 3½ years. So this is not about being unwilling to support filling judgeships, but it is about a very specific concern about what has been happening in Michigan and the lack of willingness of the administration to work with both Senators to fulfill our equal responsibilities of being able to pick the best people to serve our great State for a lifetime appointment.

These are not Cabinet appointments of this President. They are lifetime appointments. The reason the Framers of the Constitution divided the responsibility—half with the President and half with the Senate, as we know—is because this is a third branch of Government with lifetime appointments, and it is very important there be the maximum amount of input, balance, and thoughtfulness brought to this process.

Unfortunately, regarding the Sixth Circuit, until we have a fair solution, I believe I have no other option than to oppose this cloture vote and to urge my colleagues to do the same.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Parliamentary inquiry, Mr. President. What is the business before the Senate?

The PRESIDING OFFICER. The nomination of Henry Saad to the Sixth Circuit Court of Appeals is the pending business.

Mr. HARKIN. I thank the Chair.

UNITED STATES-MOROCCO FREE-TRADE AGREEMENT

Mr. HARKIN. Mr. President, I wish to take a few minutes of the Senate's time to discuss the reasons behind my decision to vote against the Morocco free-trade agreement implementing legislation which the Senate passed earlier today. I want to make very clear that my vote was not in any way against a free-trade agreement with Morocco. My vote, as was my vote against the Chilean free-trade agreement, was a protest against the continued determination by this administration to undermine and to do away with provisions that address labor issues, especially the worst forms of child labor, that we had contained in the Jordan free-trade agreement and relevant provisions in the Generalized System of Preferences.

In fact, I welcome this affirmation of the strong economic and political relationship that exists between the United States and the Kingdom of Morocco which can be strengthened by this agreement. I recognize this legislation is almost certain to pass the House this week very easily, and the United States-Morocco Free-Trade Agreement will go into effect next January.

The Kingdom of Morocco is a politically moderate Muslim nation that has been a long-time friend of the United States, a friendship that has been demonstrated most recently with their support in the aftermath of the tragedy of September 11, 2001.

Morocco has been a valuable partner in fighting the global war on terror, and so it is appropriate for the U.S. Government to reciprocate that support with a bilateral free-trade agreement so long as it leads to expanded economic opportunities for both partners.

Once in place, this agreement will generate significant economic benefits to both Morocco and the United States, and with Morocco's strategic position on the continent of Africa and easy access into Europe through the Strait of Gibraltar, it could serve as a gateway to even more markets.

This bilateral free-trade agreement could also serve as the foundation for a far wider free-trade agreement with the entire region of the Middle East and northern Africa.

With respect to agriculture, this free-trade agreement provides modest but clear opportunities to a wide range of U.S. commodities.

The opportunities provided in the free-trade agreement in non-agricultural goods and services will be substantial as well, and it reflects the determination of the Government of Morocco to modernize their economy to the benefit of the people of Morocco.

So count me as a friend of Morocco. Morocco has been a strong ally of the United States. It is a moderate nation. I have had the privilege of visiting Morocco on at least two occasions, maybe more, and I have a great deal of respect and admiration for the Moroccan people. Nonetheless, I decided to vote against it because I intend to call attention to the decision of U.S. negotiators to retreat from the provisions under the Generalized System of Preferences that requires the U.S. Government to monitor our trading partners on their progress in meeting international standards on the use of child labor, and these provisions in the GSP also provide leverage to encourage those countries to continue to make progress by permitting sanctions to be imposed against those who backtrack.

The Bush administration has taken a weak stand toward child labor in this latest trade agreement. In 2000, I, along with then-Senator Helms of North Carolina, authored an amendment that unanimously passed the Senate that extended GSP benefits to countries that took steps to implement ILO Convention 182 on the worst forms of child labor, and it mandated that the President report on the progress of these countries. If the President determined that countries were not taking steps to implement the ILO Conventions, benefits would be withheld.

The trade agreement that we passed with Chile earlier, and with Morocco, takes a step backward. As I said at the time, I first proposed we have a free-trade agreement with Chile in 1993, 11 years ago. So I had mixed emotions when I had to vote against the free-trade agreement with Chile because Chile's Government is making great progress. But this administration sought to undermine what we had achieved in the Jordanian free-trade agreement and in the Generalized System of Preferences.

Morocco does have problems with child labor. Although not employed in regular manufacturing, child labor is commonly used in cottage industries, such as rug making, and many Moroccan middle-class households use children as domestic servants. The Government of Morocco did pass new labor laws last month which included raising the minimum working age from 12 to 15 and reducing the workweek from 48 to 44 hours, but a recent U.S. Department of Labor report indicates that enforcement of existing laws is severely constrained.

So while Morocco has been a good friend, while they are trying to make progress, I think our trade laws ought to bolster that progress in doing away with the worst forms of child labor.

I take into account these considerations when I determine whether I will support a given trade agreement, as well as the economic gains that may be generated.

As in the case of Chile, my concern about the lack of direct protection against the use of child labor was the overriding factor, so I voted no on the free-trade agreement with Morocco. Again, as I say, I do not want this to be misinterpreted in any way as any lack of support for our mutual friendship and the continued development of relations between the United States and Morocco.

APPROPRIATIONS

Mr. HARKIN. I was watching on the monitor when Senator BYRD was recently on the floor talking about the lack of considering appropriations bills. In 2 days, we are going to adjourn for recess. What do we have to show for it? By this point, the Senate should have passed most, if not all, of the 13 appropriations bills, but this year under the Republican leadership we have only passed one, the Defense bill. We have not even debated the 12 others, much less put them to a vote.

Why is that? Is it because we are so busy in the Senate that we cannot debate these? Hardly. We spent days talking about judges who stand no chance of being confirmed; days on an amendment to ban gay unions that everyone knew would not pass, could not even get a majority vote, let alone 67 votes needed for a constitutional amendment. We spent weeks on a class action bill because Republican leadership did not want to consider amendments on which they thought they might lose.

Meanwhile, the Senate leadership has taken no action on increasing the minimum wage or extending unemployment benefits that could really make a difference for hard-working Americans.

The highway bill, which would create thousands of jobs, is now almost a year overdue, hung up by a veto threat of the White House. The bill to authorize Corps of Engineers projects that are important to farmers in my State was passed by the committee a month ago. There is no sign of any consideration in the Senate.

According to the Senate leadership, there is no time to take up appropriations bills that provide funding for critically important Government services. Passing the appropriations bills ought to be one of our top priorities. These bills pay for everything from roads and veterans health to homeland security and education. But here it is, July 21, with only 21 legislative days remaining in the fiscal year, and we have passed one appropriations bill.

That is all.

As the ranking Democrat on the Labor, Health, Human Services and Education Appropriations Committee, I find this very troubling. It is not the committee chairman's fault. I know Senator STEVENS is anxious to pass these bills. The same goes for the chairman of the Labor, Health, Human Services and Education Appropriations Subcommittee, Senator SPECTER. Our staffs have worked together closely on a bill. We are ready to mark it up on a moment's notice, but the White House and the Republican leadership in the Senate seem to have no interest in moving any appropriations bill other than Defense.

The reason is simple when one thinks about it. If these appropriations bills get debated on the Senate floor, everyone will see what the Republican Party's priorities are. It will be very clear. The Republican Party is out of touch with middle-class and low-income Americans. Education is a case in point. Two and a half years after President Bush signed the No Child Left Behind Act, it is obvious he has no intention of providing the funding to make it work. President Bush's budget for next year shortchanges the No Child Left Behind Act by a whooping $9.4 billion.

No wonder we hear from school boards, teachers, and principals all over our States complaining about the No Child Left Behind Act. It is an unfunded Government mandate, the biggest of all, telling our local schools what they have to do, and yet we do not provide the funding that was promised by the President, $9.4 billion less than what he promised, and it is shortchanging our schools.

Look at title I in education. That is the Federal program that specifically serves disadvantaged children who are at the most risk of falling behind and being left behind. The President's budget shortchanges this program by more than $7 billion. Now we are up to $16 billion in two cases of education.

It is the same story with kids with disabilities. The President's budget provides less than half of the level Congress committed to paying when the Individuals with Disabilities Education Act was passed in 1975. Meanwhile, Mr. Bush continues to oppose the bipartisan legislation Senator HAGEL and I have offered to fully fund this law.

On higher education, the President offers virtually no help to low- and middle-income students who cannot afford to go to college. Under President Bush's budget, the maximum Pell grant award would be frozen for the third straight year while college tuitions continue to rise through the roof.

The level of Pell grants in the President's budget next year will be lower than it was in 2002. One wonders why so many students cannot afford to go to college now or why they are borrowing more money and graduating with these big debts. Well, maybe that is the administration's goal: Get these kids to borrow more money from the banks, pay these big interest rates, pay it back, rather than making Pell grants, which they should be providing.

Meanwhile, President Bush's budget eliminates funding entirely for programs like school counselors, arts and education, gifted and talented programs, and dropout prevention, all zeroed out in the President's education budget.

The administration says there is no money to do this, no money to make good on the pledges made only 2 years ago.

Well, I am sorry if I strongly disagree. Bear in mind that in this same budget with all of these cuts to education, the President calls for another $1 trillion in tax cuts.

It seems to me if there is room for $1 trillion in tax cuts, surely there is room for $9.4 billion to fund the No Child Left Behind education bill. That would be less than 1 percent of the proposed new tax cuts.

Time and again we hear this administration say, well, education reform is not about money. It is true, education reform is not only about money, but let's be real: If we are going to modernize school buildings, it costs money. If we are going to buy up-to-date textbooks and school technology, guess what. It costs money. If we are going to reduce class sizes, it costs money. If, under the No Child Left Behind Act, we want highly qualified teachers in the subjects in which they teach, guess what. It costs money. And if we want to ensure all kids with disabilities are learning at the proficient level as required by the new law, guess what. It costs money. If we want to ensure all young people, regardless of income, have a shot at going to college, guess what. It costs money. Unfortunately, money is something we do not get very much of in the President's education budget.

If they want a tax break for the wealthy, they get $1 trillion. If we want to fund education, forget it in the President's budget.

We Democrats tried to increase funding for education during the debate on the budget resolution in March. We offered amendments on the No Child Left Behind Act, on afterschool centers and Pell grants, but the Republican majority rebuffed us every time. Now the Republican leadership in the Senate will not even give us a chance to debate an education appropriations bill and offer amendments on the floor of the Senate. They will not even give us a chance to do that.

A couple of years ago when the President signed the No Child Left Behind bill, he seemed to think that education was an important Federal responsibility—Federal, not local. The President signed the No Child Left Behind Act, a Federal mandate to local schools. If the President thought 2 years ago that education was an important Federal responsibility, why is the President so reluctant to have us take up an appropriations bill that would fund this law?

I believe I know why. The Republicans have backed themselves into a corner. They are doling out so many tax cuts for the rich that they do not have any money left to fund our Nation's schools. They know if they offer an education bill with the limited amount of money they are willing to spend on students, there is going to be a huge outcry across the country. The American people would see what the President really stands for. They would see, in black and white, that this administration has no real interest in leaving no child behind.

Four years ago we were looking at over $5 trillion in surpluses over 10 years, with the Federal Reserve talking about the great economic effects of completely paying off the Federal debt by 2009. That was 4 years ago.

Four years later, now, this year, we are facing a record deficit of over $400 billion just this year. There are many reasons for that turnaround, but the biggest by far is the tax cuts. About half of the tax cuts we have passed here go to people averaging an income of over $1 million a year. Let me repeat that: Over one-half of those tax cuts that we have passed here go to people averaging an income of over $1 million a year.

This administration's misguided tax policies are undermining our Nation's fiscal strength; they are weakening our economy, jeopardizing Social Security, and reducing our ability to provide for the needs of our children and our Nation's education. It is no wonder that the Senate Republican leadership wants to avoid the issue of education funding. They do not want to bring the education funding bill out on the floor for open debate and amendments. They just want to sweep it under the rug and hope that no one notices.

The Republican Party controls the Senate schedule, so they have that power. But I urge them to reconsider. Let's mark up the bill in subcommittee, to the full committee, and bring it to the floor.

As I said, Senator SPECTER has done his job. My staff worked with his staff. We have a bill that is ready to go. Bring it out here. Let's have a good debate about how much we want to fund education. Give the public a chance to weigh in and see an open debate. Let's have amendments. Let's vote on them. I thought that was the way the process was supposed to work.

Maybe my friends on the other side of the aisle are right. Maybe people

really do care more about tax cuts for the rich than about funding education. I don't think that is so, but there is only one way to find out. That is to bring the education appropriations bill to the floor in open debate and let Senators on both sides of the aisle offer their amendments. Let's vote on those amendments, and let's see how the elected Representatives of the people of this country feel about funding education after those debates and after those votes. As I said, it seems to me this is the way our democratic system is supposed to work.

Again, I urge the Republican leadership: Bring out our appropriations bills. I focus on education because I happen to be the ranking member on the appropriations subcommittee dealing with education, health, and labor. There are so many more, as I mentioned, such as the highway bill and homeland security, that we need to get through on the Senate floor. There are 21 days left, and we have passed only one appropriations bill.

The Senate is not doing its business. It is time we do.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized to speak as if in morning business for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Thank you, Mr. President.

DARFUR, SUDAN

Mr. DURBIN. Mr. President, 1,000 people died there yesterday, 1,000 people will die there today, 1,000 more will die tomorrow and the day after that, and then the next day for as long as we can possibly imagine. I am speaking of Darfur, Sudan. In that region of the world this year, 300,000 people may be dead; 1½ million people in Sudan are homeless. Villages have been decimated, women have been systematically raped, crops have been destroyed, and wells have been poisoned with human corpses. This is genocide. Let us not mince words. It demands action.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide requires signatories, including the United States of America, to prevent and punish acts that are ''committed with the intent to destroy, in whole or in part, a national, ethical, racial or religious group.'' That is exactly what is taking place in Sudan today.

We in the United States have to join with civilized nations around the world to stop the genocide in Darfur because we have failed sometimes before. We failed knowingly time and time again in the 20th century. Ten years ago we failed the people of Rwanda.

Samantha Power is the author of a book which I have read, a book which haunts and inspires me. It is a book entitled ''A Problem From Hell: America and the Age of Genocide.'' She wrote, ''The United States had never in its history intervened to stop genocide and had in fact rarely even made a point of condemning it as it occurred.''

That is a terrible condemnation on our Nation, and it is one that I think calls us all to action in Sudan.

This is not a partisan issue. I want to salute my colleagues on the Democratic side, Senator JON CORZINE of New Jersey, and on the Republican side Senator SAM BROWNBACK of Kansas and Senator MIKE DEWINE of Ohio. They have spoken out on this floor time and time again about the genocide in Sudan. They remember, as I remember, what happened in Rwanda—what happened while I was a Member of Congress, and while I did not pay as much attention as I should have.

Ten years ago, between 800,000 and a million people were butchered in Rwanda. The killings took place with terrifying efficiency. The weapons of mass destruction were simple: the machete, the club, the torch. Those with enough money in Rwanda were sometimes able to pay their killers to shoot them rather than hack them to death with a machete. These killings were crudely carried out and executed, but they were carefully orchestrated. They were designed to wipe out an ethnic group, the Rwandan Tutsis, from the face of the Earth, along with any other moderate Hutus who dared to question the ruling ideology.

Bill Clinton, a man I count as a friend, was President of the United States when this occurred. He read a series of articles about the killings in Rwanda. He turned to his National Security Adviser Sandy Berger and asked, Is what they are saying true? How did this happen? Bill Clinton came to realize after the genocide in Rwanda that the United States had made a historic, tragic mistake of not speaking up, of not moving with other nations to stop what happened in Rwanda. He visited that country and apologized on behalf of our country and the rest of the world for ignoring, for standing idly by, while a million people died. That happened in Rwanda because the United States allowed it to happen.

I am dwelling on Rwanda today, but the crisis is in Sudan. Why? Because years from now I don't want those of us serving in Congress to be asked about Sudan, How did this happen? We know how it is happening, and we know it continues to happen even as we speak.

Ten years ago, seven Tutsi pastors trapped in a hospital that was no sanctuary wrote to the world pleading for intervention and assistance. Here are their words: ''We wish to inform you that we have heard that tomorrow we will be killed with our families.'' There was no intervention. There was no help. And the next day, these Christian pastors and their families were killed, and hundreds of others with them.

We failed to act in Rwanda. We cannot fail to act in Darfur, Sudan. For months, in western Sudan, the janjaweed, Arab militias—death squads—have waged war on the ethnic African villagers. They have killed thousands outright. They have engaged in massive, systematic rape and told their victims that they hoped they would produce ''light-skinned'' babies. They have made 1.5 million people homeless, some internally displaced and some forced into Chad and other neighboring nations. The Sudanese Government, a government which should be protecting its people, has conspired in this mass murder and contributed to it by deliberately shutting out international humanitarian efforts to reach the refugees. Starvation, disease, and exposure to the elements are also the weapons of genocide.

My family grew up in Springfield, IL in a typical American community and typical American neighborhood. Next door were our closest friends, the Mays family. There was a young woman, a young girl when I first met her, who grew up with my kids. Her name is Robin Mays. She is an amazing young woman who succeeded in so many different facets of life and decided to enlist in the Air Force right out of college. She was in the Air Force for 7 years as an officer in charge of logistics. When she came out of the Air Force, she came to me and said, I would like to do something that uses my skills that might help people. I put her in contact with the World Food Program. She went to Ethiopia, and she was involved in dealing with the refugee problems and feeding thousands. She came back to the United States and went to work for USIA. A few months ago, she was sent to the Sudan, and she is there. She is working in Sudan now with the victims of genocide, with the refugees. The other day she sent an e-mail to her family. She shared it with me. She was so excited because she heard there were actually people in the United States talking about what was happening in Sudan. It was encouraging to her that the rest of the world even knew what was happening in Sudan. She didn't hold any great hope that we would run to her aid and find some relief for these poor victims, but she was so encouraged that we even knew and that we even cared.

What a sad commentary on a great nation like the United States and many other great nations around the world, that that is the best we can do to acknowledge the problem, to express our concern.

An estimated 180,000 Sudanese have fled to Chad, one of the poorest countries in the world. Hundreds of thousands more are displaced within Sudan, roaming around, trying to look for a safe place or something to feed their children. When you look at the images

of the mothers in the Darfur region, Sudanese mothers and their children with matchstick legs, covered with flies, dying, starving right before our eyes, we have to ask, are we doing what we should? Is the United States doing what it should?

We have to take steps, and we have to take them now, to stop this mass slaughter. We start by calling it what it is—genocide—and by labeling it a genocide. It calls all who signed the treaty to action to prevent genocide, not just to care but to do something. The United States and the United Nations must both label this for what it is. Secretary of State Powell has stated that Sudan is ''moving toward a genocidal conclusion.'' That is short of calling it a genocide, but I give the Secretary of State credit. In many times gone by, when a genocide was occurring, we could not even bring ourselves at the official level to acknowledge it. Secretary of State Powell is doing that, and I salute him for it. Sudan has reached the stage of genocide, but that genocide has not reached its final conclusion. There is still time to save the lives of hundreds of thousands.

On Friday of this week, many of us will leave this Chamber. We will be off to political conventions, campaigns, time with our families, vacations. The first part of September, we will return. Six weeks from now, 45 days from now, we will be back, but during that 45-day period of time, 40,000 or 50,000 innocent people will die in the Sudan. There is no vacation from genocide. There is certainly no vacation from the Sudan. I try to imagine, as I stand here with all the comforts of being a U.S. Senator in this great country, what it must be like to be a mother or a father in that country now watching your children starve to death, fearing systematic rape, torture, and killing, which have become so routine.

We have to do something. We have to do it now. Congress should move to pass resolutions to let the world know we are prepared to move forward. Senator BROWNBACK, a Republican from Kansas, and Senator CORZINE, a Democrat from New Jersey, are pushing forward a resolution that we should not leave this city for any length until it is enacted. But we need not just words. We need to continue to send assistance, as we have, and we deserve credit as a nation for caring and reaching out, but we need to do more—food, water, medicine, but also security for foreign aid workers to get in and to allow the Sudanese refugees to return home.

The United Nations Security Council has failed as well. It has been stymied by several nations which don't want to hold the Sudanese Government responsible for what is happening. We need to move immediately. I know our new U.N. ambassador, Jack Danforth, a man whom I greatly respect, a man of conscience, understands this, as we do. He needs to push those members of the Security Council to get the United Nations to act on Darfur and the Sudan immediately. We need to intervene. We need to see whether, in the 21th century, international institutions such as the United Nations can succeed where others have failed.

The United States also has rich intelligence resources and capabilities that track militia activity. We have 1,800 troops on Dijibouti who could join an international humanitarian mission. Ultimately, it is the African Union that must supply the personnel to enforce security, but we can help.

President Bush—and I disagree with him on so many things, but I have to give him credit where it is due—helped in Liberia with a handful of marines prepared to act. They brought stability to a situation that seemed out of control. We need that same leadership again from this White House, from this Department of Defense, from the State Department, and from this Congress.

Security is a prerequisite in this country of Sudan for helicopter and truck transport which is going to carry supplies to those who are literally starving to death. The Sudanese Government has to rein in these militias. It cannot continue to look the other way. It recently allowed some relief supplies to be offloaded, but the Government has helped unleash the genocide in the Sudan, helped arm and direct the Janjaweed. They cannot be trusted to see to their disarmament without international supervision. We have voted to extend millions in emergency assistance to Sudan, but that assistance will never reach them unless we create conditions on the ground that allow its distribution.

Mine is only one voice in a Chamber of 100 Senators, in a nation of millions of people. I don't know that what I have to say in the Senate will have an impact on anyone, but I could not and many of my colleagues could not countenance leaving Washington in good conscience for an August vacation recess and acting like the carnage in Sudan is not occurring. It is genocide. Those in the civilized world must stand up and not only condemn it but take action to bring it to an end as quickly as possible.

I yield the floor.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Minnesota.

Mr. COLEMAN. Madam President, I rise to speak on a matter different than what my friend and colleague from Illinois has spoken about, but before I do, I associate myself with his comments.

I stand with him and others on both sides of the aisle in asking the question, Are we doing all that we should be doing in the Sudan? Genocide is occurring. We can have debate about the legal definition of genocide, but for the folks who are experiencing the pain and the suffering, the torture, they are not interested in legal debate.

I hope we heed the call of my friend from Illinois, that before we leave, before we go home to be with our families and do the things we do in our State and throughout this country, that we at a minimum speak out, that at a minimum the voice of this Congress be heard, and that we then move forward on the path, beyond speaking out, that will provide some action, that will provide a level of safety, security, and comfort, the basic things that need to be done in the Sudan.

As I listened, I want my friend from Illinois to know that his words have had impact. I hope they echo far beyond these halls and that we do what should be done, that we make a statement in this Congress, that statement be turned into action, and that action has some impact.

(The remarks of Mr. COLEMAN pertaining to the introduction of S. 2715 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. COLEMAN. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Madam President, last night I filed a cloture motion on the Sixth Circuit judicial nomination of Henry Saad. That vote will occur tomorrow morning. Two additional Sixth Circuit nominations are on the Executive Calendar, ready for consideration. I am prepared to ask unanimous consent for time agreements and up-or-down votes on these nominations; however, I understand that there will be objection from the other side.

I ask the Democrat leadership if it is true they would not agree to a time agreement on these Sixth Circuit nominations?

Mr. REID. The majority leader is correct.

NOMINATION OF RICHARD A. GRIFFIN TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

NOMINATION OF DAVID W. MCKEAGUE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

Mr. FRIST. With that objection, I ask unanimous consent that the Senate proceed en bloc to the nominations of Calendar No. 789, Richard Griffin, to be U.S. Circuit Judge for the Sixth Circuit, and No. 790, David McKeague, to be U.S. Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Without objection, the clerk will report the nominations.

The legislative clerk read the nominations of Richard A. Griffin, of Michigan, to be United States Circuit Judge for the Sixth Circuit;